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KANSAS LABOR LAWS

AND

LAWS ESPECIALLY AFFECTING
THE EMPLOYMENT OF LABOR

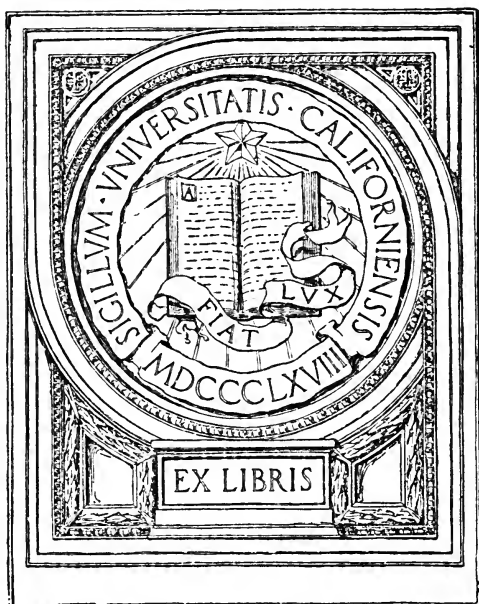
(Annotated)

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Compiled for State Department of
Labor and Industry

BY
RICHARD E. McINTOSH

January, 1918



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RICHARD E. MCINTOSH

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PREFACE.

The large number of laws in the General Statute book of the state of Kansas, and the consequential unwieldy size of the volume, make it inconvenient for use by those who are interested only in the laws relating to one subject. Especially is this true of the labor laws, as portions of many statutes having a more or less direct bearing upon the relationship between employer and employee are scattered through the entire book, on account of their closer relation to other general subjects, and are therefore easily overlooked by the layman who is honestly trying to comply with the labor laws of the state.

In the work of law enforcement the Department of Labor and Industry has found that in many cases the law is unintentionally violated because of the failure of the offending parties to know or properly understand the requirements of the statutes. Some employers are found also who take advantage of the fact that their employees do not know of the protection offered by the laws, and who deliberately ignore their legal obligations.

To meet this situation and to place within the reach of every employer and worker the opportunity to familiarize himself with the laws affecting labor, this book has been prepared and a sufficient number printed for free distribution to those interested therein.

An effort has been made to include in a small and conveniently arranged volume all the laws relating to the employment of labor and to the relationship between employer and employee in the state of Kansas, including the latest labor laws and amendments, arranged and indexed so as to make them readily accessible.

It is the present intention of the department to issue a supplement to this volume at the close of the next and succeeding sessions of the legislature, containing such changes and additions as are made necessary by new acts that are passed from time to time.

In the preparation of this book the department feels that it has been fortunate in securing the services of Mr. Richard E. McIntosh, of the Topeka bar, the compiler of the General Statutes of Kansas for 1915. His experience in having so recently compiled all of the statutes of the state has peculiarly fitted him for the work of compiling this volume, and should insure its completeness and accuracy.

In presenting to the public this compilation of labor laws of the state of Kansas we hope it will accomplish the purpose for which it is intended, and that it will assist both employers and workers to become familiar with the requirements of the statutes and thus result in a better compliance therewith.

P. J. McBRIDE,
Commissioner of Labor.

TOPEKA, KAN., JANUARY, 1918.

COMPILER'S NOTE.

This book contains the laws in force in the state of Kansas pertaining to the employment of labor. Some acts which do not relate especially to labor, particularly criminal statutes, have been included for the reason that there appeared to be some phase of the operation of the act which was of interest to employers or to employees.

The amendments to the workmen's compensation act, passed at the 1917 session of the legislature, as well as all other new acts and amendments affecting labor, have been included.

The digest at the head of each section, the digest of sections at the beginning of each chapter or article, and the alphabetically arranged index covering the whole book, should make it possible for any one to turn to the law relating to any given proposition.

The sections which have been construed by the supreme court of Kansas (up to January 1, 1918) are followed by a note showing the construction placed upon them and citing the pertinent cases. Reference is also made to cases decided by the supreme court of the United States affecting the construction or constitutionality of acts printed herein.

The punctuation of the original acts has been followed. The boldface digest of each section is the work of the compiler and forms no part of the act as passed by the legislature.

The acts contained herein will of course remain unchanged until another session of the legislature. Federal acts have not been printed in full, but exhaustive notes have been inserted covering the substance of such as are of particular importance in Kansas.

RICHARD E. MCINTOSH.

TOPEKA, KAN., JANUARY, 1918.

TABLE OF CONTENTS.

CH.	PAGE
1. Constitutional provisions (§§ 1-10).....	7
2. Accidents (§§ 11-14).....	11
3. Apprentices (§§ 15-38).....	12
4. Arbitration (§§ 39-48).....	17
5. Barber board (§§ 49-59).....	19
6. Blacklisting, etc. (§§ 60-64).....	23
7. Chairs, etc., for women and girls (§§ 65-66).....	24
8. Child labor (§§ 67-85).....	25
9. Civil-service commission (§§ 86-113).....	32
10. Civil service in cities of the first class (§ §114-133).....	41
11. Construction, etc., of buildings, etc. (§§ 134-135).....	48
12. Convict labor (§§ 136-160).....	49
ART. 1. Labor performed within penitentiary grounds (§§ 136-153).....	49
2. Labor performed outside penitentiary grounds (§§ 154-160).....	55
13. County prisoners (§§ 161-162).....	57
14. Department of labor and industry (§§ 163-180).....	58
15. Elections (§§ 181-185).....	66
16. Employment offices and agencies (§§ 186-197).....	67
17. Explosives, storage, handling, etc. (§§ 198-204).....	70
18. Fire protection (§§ 205-218).....	73
19. Free employment bureau and free employment agencies (§§ 219-227).....	78
20. Holidays (§§ 228-232).....	80
21. Industrial welfare commission (§§ 233-253).....	81
22. Injunctions in labor cases (§§ 254-257).....	88
23. Liens for labor (§§ 258-284).....	90
ART. 1. Liens on personal property (§§ 258-266).....	90
2. Liens on oil and gas leaseholds (§§ 267-270).....	92
3. Mechanics' liens (§§ 271-281).....	93
4. Bond to secure payment of claims (§§ 282-284).....	100
24. Manufacturing establishments (§§ 285-292).....	102
25. Militia (§ 293).....	105
26. Mines and mining (§§ 294-399).....	106
ART. 1. Acts of miner endangering lives, etc. (§§ 294-296).....	106
2. Bath-houses at coal mines (§§ 297-301).....	107
3. Black powder, use in coal mines (§§ 302-307).....	109
4. Dynamite and other detonating explosives (§§ 308-312).....	110
5. Escape-shafts in coal mines (§§ 313-317).....	111
6. Examining board, certification of miners (§§ 318-328).....	113
7. Fraudulent use of check numbers (§§ 329-330).....	116
8. General act for health and safety of miners. (Act of 1883.) (§§ 331-342)....	117
9. General act for health and safety of miners. (Act of 1897.) (§§ 343-359)....	123
10. Lead and zinc mines, eight-hour day (§§ 360-361).....	129
11. Mine-rescue work (§§ 362-370).....	129
12. Room-and-pillar plan, entries, etc. (§§ 371-373).....	132
13. Shot-firers, firing of shots, etc. (§§ 374-381).....	133
14. Sprinkling and removal of dust, etc. (§§ 382-386).....	135
15. Telephone systems in coal mines (§§ 387-392).....	136
16. Weighing of coal at the mine (§§ 393-399).....	157

TABLE OF CONTENTS—CONCLUDED.

CH.	PAGE
27. Misdemeanors, jurisdiction (§ 400).....	139
28. Mother's aid (§§ 401-404).....	140
29. Night schools (§§ 405-410).....	143
30. Officers, importing or personating (§§ 411-414).....	144
31. Old soldiers' preference law (§§ 415-418).....	145
32. Paroled and discharged prisoners (§ 419).....	147
33. Plumbers, examination and certification (§§ 420-426).....	147
34. Poll tax (§ 427).....	149
35. Public work, eight-hour day (§§ 428-430).....	151
36. Railroads (§§ 431-491).....	152
ART. 1. Bond from contractor for protection of laborers, etc. (§§ 431, 432).....	153
2. Clearance of overhead structures (§§ 433, 434).....	154
3. Damages caused by negligence of agents, etc. (§§ 435-437).....	154
4. Damages from neglect on part of railroad company (§ 438).....	156
5. Destroying or injuring railroad property, etc. (§§ 439-442).....	157
6. Flagman stationed to protect train (§§ 443-446).....	158
7. Free passes, etc. (§§ 447-454).....	159
8. Frogs, switches, and guard-rails, filling, etc. (§§ 455, 456).....	161
9. Headlights on locomotives, requirements (§§ 457, 458).....	162
10. Hours of labor (§§ 459, 460).....	162
11. Injury to or death of employee, liability of railroad company (§§ 461-466).....	164
12. Interlocking or automatic signals at crossings (§ 467).....	166
13. Journal brass, penalty for removal (§§ 468-469).....	166
14. Obstructing operation of railroad (§§ 470-473).....	167
15. Passengers on freight trains (§§ 474-476).....	168
16. Pilot for detoured trains (§§ 477, 478).....	169
17. Shelter for laborers constructing or repairing equipment (§§ 479, 480).....	169
18. Street railway across tracks of railroad (§§ 481, 482).....	170
19. Switch lights and lights controlling movement of trains (§§ 483-485).....	170
20. Way cars or cabooses, size and construction (§§ 486-488).....	171
21. Wires crossing tracks of railroad (§§ 489-491).....	172
37. Small debtors' courts (§§ 492-503).....	173
38. Street railways and interurban lines (§§ 504-507).....	176
39. Sunday labor (§§ 508-511).....	178
40. Union labels, trade-marks, etc. (§§ 512-517).....	179
41. Unlawful assemblies (§§ 518-521).....	181
42. Vagrancy (§§ 522-528).....	182
43. Wages, payment, collection, etc. (§§ 529-556).....	184
ART. 1. Claims for wages, exemption (§ 529).....	184
2. Drawing check or draft when no funds deposited (§§ 530-535).....	185
3. Exemption of wages earned in another state (§ 536).....	186
4. Garnishment, amount of personal earnings taken (§§ 537, 538).....	186
5. Insolvency, wages preferred (§ 539).....	189
6. Resignation or discharge of employee, payment of wages (§§ 540-541).....	189
7. Semi-monthly payment by corporations (§§ 542-544).....	190
8. Time checks, due bills, script, orders, etc. (§§ 545-548).....	190
9. Time for bringing actions for wages (§ 549).....	191
10. Weekly payment in lawful money by certain corporations (§§ 550-556).....	192
44. Workmen's compensation act (§§ 557-603).....	194
45. Wrongful death (§§ 604-605).....	220
Index.....	223

KANSAS LABOR LAWS.

CHAPTER 1.—CONSTITUTIONAL PROVISIONS.

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| <p>§1. People have right to assemble, etc., and petition for redress of grievances.</p> <p>2. Right of trial by jury.</p> <p>3. Slavery and involuntary servitude prohibited; exception.</p> <p>4. Habeas corpus, when right to writ suspended.</p> <p>5. Bailable offenses; fines; cruel or unusual punishment.</p> | <p>§6. Trial; defense of accused; witnesses; speedy public trial; impartial jury; former jeopardy.</p> <p>7. Liberty of the press; free speech; libel.</p> <p>8. No person to be transported; conviction not to work corruption of blood.</p> <p>9. Imprisonment for debt.</p> <p>10. Remedy for injuries by due course of law; justice without delay.</p> |
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SECTIONS OF BILL OF RIGHTS.

§ 1. People have right to assemble, etc., and petition for redress of grievances. The people have the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances. [G. S. 1915, § 107.]

§ 2. Right of trial by jury. The right of trial by jury shall be inviolate. [G. S. 1915, § 109.]

Verdict of jury must be verdict of each individual juror. *Bowman v. Wheaton*, 2 K. A. 581.

Superadded conditions of recognizance not cause for dismissal on appeal. *City of Kansas City v. Hescher*, 4 K. A. 782.

Applied only to cases so triable at common law. *Kimball et al. v. Connor et al.*, 3 K. 414. Municipal court try without jury when jury obtainable on appeal. *City of Emporia v. Volmer*, 12 K. 622.

In action for recovery of money, jury may be demanded. *Board of Education v. Scoville*, 13 K. 17.

Duty of courts to enforce rigid observance of statutes. *The State v. Snyder*, 20 K. 306. Where no jury in first instance, right on appeal inviolate. *In re Rolfs, Petitioner*, 30 K. 761.

Power of legislature limited by provisions of bill of rights. *Atchison Street Rly. Co. v. Mo. Pac. Rly. Co.*, 31 K. 665.

Not entitled to trial by jury for violating city ordinance. *The State, ex rel., v. City of Topeka*, 36 K. 85.

Appeal to court with jury must be without unreasonable restrictions. *In re Jahn, Petitioner*, 55 K. 697.

Twelve jurors necessary in trial on felony charge. *The State v. Simons*, 61 K. 752.

Trial in police court without jury does not violate section. *In re Effie Kinsel*, 64 K. 3.

Right to jury of twelve may be waived in misdemeanors. *The State v. Wells*, 69 K. 793. Section not violated by jury of four in lunacy inquest. *The State v. Linderholm*, 84 K. 603.

§ 3. Slavery and involuntary servitude prohibited; exception. There shall be no slavery in this state; and no involuntary servitude, except for the punishment of crime, whereof the party shall have been duly convicted. [G. S. 1915, § 110.]

Act requiring work on roads to pay poll tax, valid. *In re Dassler, Petitioner*, 35 K. 684. Does not prohibit labor on streets for poll taxes. *The State, ex rel., v. City of Topeka*, 36 K. 85.

Ordinance permitting employment of city prisoners on streets held valid. *City of Topeka v. Boutwell*, 53 K. 30.

§ 4. Habeas corpus, when right to writ suspended. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion. [G. S. 1915, § 112.]

§ 5. Bailable offenses; fines; cruel or unusual punishment. All persons shall be bailable by sufficient sureties except for capital offenses

where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. [G. S. 1915, § 113.]

Confinement five to twenty-one years for rape, not unconstitutional. *The State v. White*, 44 K. 514.

A hard labor in penitentiary, not cruel or unusual punishment. *The State v. White*, 44 K. 514.

Fine and jail sentence held not cruel or unusual punishment. *Ratcliff v. Stock-yards Co.*, 74 K. 16.

Confinement when unable to pay fine and costs, not violative. *In re Ellis*, 76 K. 370.

Crime committed when penalty is death, amended afterwards, not bailable. *In re Schneck*, 78 K. 210.

Defendant, after conviction of felony, is entitled to bail. *In re Truskett*, 84 K. 877.

§ 6. Trial; defense of accused; witnesses; speedy public trial; impartial jury; former jeopardy. In all prosecutions, the accused shall be allowed to appear and defend in person or by counsel; to demand the nature and cause of the accusation against him; to meet the witness face to face, and to have compulsory process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense. [G. S. 1915, § 114.]

Second trial at defendant's request, held not twice in jeopardy. *The State v. McCord*, 8 K. 242.

Juror who has formed any opinion is not impartial juror. *The State v. Medlicott*, 9 K. 279.

Simple impression not opinion such as renders juror partial. *The State v. Medlicott*, 9 K. 279.

Dissenting opinion.—Any opinion formed by juror disqualifies him. *The State v. Medlicott*, 9 K. 292.

Nature of accusations need not state whether principal or accessory. *The State v. Cassaday*, 12 K. 555.

Trial for contempt by judge without jury, held not error. *The State v. Cutler*, 13 K. 134.

Finding of "not guilty" by court precludes another trial. *City of Olathe v. Adams*, 15 K. 391.

Juror who has formed opinion is not an impartial juror. *The State v. Brown*, 15 K. 400.

Trial by impartial jury of county, etc., may be waived. *The State v. Potter*, 16 K. 97.

Mere preliminary examination is not being put "in jeopardy." *The State v. Jones*, 16 K. 610.

Defendant has right to demand nature and cause of accusation. *The State v. Behee*, 17 K. 404.

Not error for jury to inspect premises without defendant accompanying. *The State v. Adams*, 20 K. 323.

Trial in another county but same district held not error. *The State v. Ruth*, 21 K. 589.

Territory attached to judicial district becomes part of district. *In re Holcomb, Petitioner*, 21 K. 636.

Where trial terminated by unavoidable casualty, defendant not "in jeopardy." *In re Scrafford, Petitioner*, 21 K. 746.

Defendant has right to delay to compel attendance of witnesses. *The State v. Roark*, 23 K. 152.

Matters growing out of same difficulty may constitute two offenses. *City of Olathe v. Thomas*, 26 K. 233.

Not error to retain juror, truth of whose opinion conceded. *The State v. Wells*, 28 K. 322.

Juror incompetent who had formed opinion founded on rumor only. *The State v. Miller*, 29 K. 47.

Not error to order expert examination of person of defendant. *A. T. & S. F. Rld. Co. v. Thul*, 29 K. 474.

State may not treat trial of misdemeanor as mere preliminary. *In re Donnelly, Petitioner*, 30 K. 197.

Entitled to jury on appeal if not in first instance. *In re Rolfs, Petitioner*, 30 K. 760.

Error to convict of offense not contemplated when information filed. *The State v. Brooks*, 33 K. 713.

Information held to comply with letter and spirit hereof. *The State v. Whisner*, 35 K. 276.

"All prosecutions" held to mean for violating state laws only. *The State, ex rel., v. City of Topeka*, 36 K. 87.

Right to argument of counsel cannot be denied to defendant. *The State v. Verry*, 36 K. 420.

Conviction on one count precludes later trial as to others. *The State v. McNaught*, 36 K. 627.

Information, larceny prosecution, must give definite description of property stolen. *The State v. Tilney*, 38 K. 714.

Entitled to discharge on habeas corpus when trial unnecessarily delayed. *In re McMicken, Petitioner*, 39 K. 408.

Change of venue to be to county designated by defendant. *The State v. Knapp*, 40 K. 149.

Juror not impartial who admits impression of guilt or innocence. *The State v. Beatty*, 45 K. 502.

Inducing witnesses to avoid process, accused not compelled to testify. *In re Nickell, Petitioner*, 47 K. 737.

Plea of guilty under fear of mob violence, not binding. *The State v. Calhoun*, 50 K. 532.

Change of venue cannot be made without consent of accused. *The State v. Kindig*, 55 K. 117.

Evidence on former trial not read without consent of defendant. *The State v. Folk*, 57 K. 257.

Defendant's consent necessary to reading of deposition taken by him. *The State v. Tomblin*, 57 K. 843.

Error to compel defendant to plead in absence of counsel. *The State v. Moore*, 61 K. 734.

Defendant's consent to eleven jurors in felony case, not binding. *The State v. Simons*, 61 K. 754.

Jury trial does not extend to violation of city ordinances. *In re Kinsel*, 64 K. 3.

Plea of "former jeopardy" not good where former jury disagree. *The State v. Alexander*, 66 K. 730.

Evidence given by witness on former trial may be introduced. *The State v. Nelson*, 68 K. 566.

Defendant may be compelled to testify where immunity granted him. *The State v. Jack*, 69 K. 391.

Defendant may waive right to jury of twelve in misdemeanor. *The State v. Wells*, 69 K. 793.

Witness may be compelled to testify where immunity granted him. *In re John Bell, Petitioner*, 69 K. 855.

Testimony given at preliminary introduced on trial on proper showing. *The State v. Harmon*, 70 K. 477.

Statements made by defendant out of court may be admitted. *The State v. Inman*, 70 K. 894.

Immunity from second jeopardy, personal privilege which defendant may waive. *The State v. White*, 71 K. 360.

Testimony given in civil case not admissible over defendant's objection. *The State v. Woods*, 71 K. 658.

Defendant not denied "speedy trial" pending appeal from motion by state. *The State v. Campbell*, 73 K. 695.

In contempt for violating injunction, defendant not entitled to jury. *The State v. Thomas*, 74 K. 368.

When jury discharged on "accident" defendant may be tried again. *The State v. Hansford*, 76 K. 681.

Where defendant produced revolver through intimidation, evidence of same admissible. *The State v. Turner*, 82 K. 794.

Verdict of acquittal cannot be set aside to any purpose. *The State v. Lyon*, 83 K. 168.

Jury having tried similar case with same witnesses not impartial. *The State v. Hammon*, 84 K. 141.

Purpose, to secure jury free from bias, prejudice, or interest. *The State v. Stewart*, 85 K. 404.

Nonresident father punished under desertion act when proper facts shown. *In re Fowles*, 89 K. 433.

Defendant in bastardy proceedings not entitled to jury. *The State, ex rel., v. Herbert*, 96 K. 490.

§ 7. Liberty of the press; free speech; libel. The liberty of the press shall be inviolate: and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such right; and in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted. [G. S. 1915, § 115.]

Law applicable to civil and criminal cases distinguished and defined. *Castle v. Houston*, 19 K. 422.

"Truth" full defense to civil action for slander or libel. *Munuy v. Wright*, 26 K. 176.

All evidence admissible tending to prove truth of statements made. *The State v. Mayberry*, 33 K. 444.

Defendant need prove only truth and publication for justifiable ends. *The State v. Verry*, 36 K. 421.

Publication concerning attorney not privileged by connection with judicial proceedings. *The State v. Wait*, 44 K. 316.

Publication devoted largely to scandals and immorality may be prohibited. *In re Banks, Petitioner*, 56 K. 243.

Privileged publication and "liberty of the press" discussed at length. *Coleman v. MacLennan*, 78 K. 711.

Employer not compelled to state cause for discharge of employee. *Railway Company v. Brown*, 80 K. 315.

Spoken words imputing unchastity actionable without proof of special damages. *Cooper v. Seaverns*, 81 K. 271.

§ 8. No person to be transported; conviction not to work corruption of blood. No person shall be transported from the state for any offense committed within the same, and no conviction in the state shall work a corruption of blood or forfeiture of estate. [G. S. 1915, § 116.]

Not violated by penalty for violation of intoxicating-liquor law. *The State v. Snyder*, 34 K. 426.

Husband inherits from deceased wife even though he murdered her. *McAllister v. Fair*, 72 K. 533.

For act prohibiting inheritance from person killed, see G. S. 1915, § 3856.

§ 9. Imprisonment for debt. No person shall be imprisoned for debt, except in cases of fraud. [G. S. 1915, § 120.]

Act authorizing arrest and imprisonment on plaintiff's affidavit alone, unconstitutional. *In re Roberts, Petitioner*, 4 K. A. 296.

Garnishee cannot be imprisoned for failure to pay his debt. *Board of Education v. Scoville*, 13 K. 33.

Prosecuting witness in misdemeanors, certain cases, imprisoned till costs paid. *In re John Ebenhack, Petitioner*, 17 K. 622.

Bond given when debtor only in custody, held valid. *Doyle v. Boyle*, 19 K. 172.

Fraud must be clearly shown to sustain imprisonment for debt. *Tennent, Walker & Co. v. Weymouth & Golden*, 25 K. 23.

Affidavit must show grounds provided for arrest or proceedings void. *Hauss v. Kohlar*, 25 K. 644.

Bill of rights not mere collection of glittering generalities. *Atchison Street Rly. Co. v. Mo. Pac. Rly. Co.*, 31 K. 665.

In proceedings in aid of execution, court may imprison for contempt. *In re Burrows, Petitioner*, 33 K. 680.

Imprisonment under bastardy act does not violate this section. *In re Wheeler, Petitioner*, 34 K. 97.

Imprisonment for failure to pay costs, not imprisonment for debt. *In re Boyd, Petitioner*, 34 K. 574.

Imprisonment for failure to pay road tax does not violate. *In re Dassler, Petitioner*, 35 K. 678.

Execution against person of judgment debtor not forbidden by section. *In re Heath, Petitioner*, 40 K. 337.

Section would not compel legislature to imprison for fraudulent debt. *The State v. Weiss*, 84 K. 168.

Section, in effect, authorizes imprisonment for debt in cases where there is fraud. *Tatlow v. Bacon*, 101 K. 26.

§ 10. Remedy for injuries by due course of law; justice without delay. All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay. [G. S. 1915, § 122.]

"Due process of law" decisions have little application in Kansas. *Gilchrist v. Schmidling*, 12 K. 271.

Granting attorney fees in actions for killing stock, not unconstitutional. *K. P. Rly. Co. v. Mower*, 16 K. 582.

Redress for all injuries suffered provided for in "civil action." *A. T. & S. F. Rld. Co. v. Rice*, 36 K. 599.

Section not violated by ordinance providing extension of city limits. *Callen v. Junction City*, 43 K. 629.

Cited in case discussing jurisdiction writ of error *coram nobis*. *The State v. Calhoun*, 50 K. 532.

"Remedy" means by tribunal having jurisdiction; section not satisfied otherwise. *Hanson v. Krehbiel*, 68 K. 672.

Words of section not given unlimited signification in all cases. *Coleman v. MacLennan*, 78 K. 722.

Common-law interpretation not strictly applied in slander by spoken words. *Cooper v. Seaverns*, 81 K. 284.

Mere irregularity in administering law does not deny constitutional right. *Griggs v. Hanson*, 86 K. 632.

Workmen's compensation act of 1911 does not violate this section. *Shade v. Cement Co.*, 93 K. 257, 258.

Every person is entitled to contract relative to his employees. *Coppage v. Kansas*, 236 U. S. 23.

CHAPTER 2.—ACCIDENTS.

§11. Accident causing loss of life or serious personal injury; statement to be sent to state factory inspector; statement not competent evidence; duty of factory inspector to make investigation and recommendations; attendance of inquest by inspector or deputy.

§12. State factory inspector to include report of accidents and recommendations in such cases in annual report.

13. Penalty for failure of owner, agent, manager, etc., to send notices and statements required.

14. Act not to apply to coal or salt mines.

LAWS OF 1909, CH. 119.

AN ACT in relation to accidents, and requiring the same to be reported to the factory inspector, requiring investigations thereof, and providing penalties for the violation of this act.

§ 11. Accident causing loss of life or serious personal injury; statement to be sent to state factory inspector; statement not competent evidence; duty of factory inspector to make investigation and recommendations; attendance of inquest by inspector or deputy. Wherever loss of life or serious personal injury shall occur in or about any factory, workshop, workyard, mill or other industrial establishment, or on any building in course of construction, or in the operation of any railroad, street-car line, public works, or in or about any passenger or freight elevator or other place, works or yards, where machinery or motive power is used, by reason of defects or faults in machinery, appliances, tools, scaffolding, ropes, cables or other appliances or materials used in construction or in the operation of said machinery or appliances, or motive power, so used, it shall be the duty of the owner, agent, manager, superintendent, or foreman in charge thereof, within twenty-four hours shall [to] mail a notice to the state factory inspector with a true and complete statement so far as known of the manner in which such accident occurred, and the cause and casualties thereof: *Provided*, Such statement shall not be competent evidence in any court in this state. If on receipt and examination of such statement and in his judgment the circumstances shall warrant, it shall be the duty of the state factory inspector to immediately go or send a deputy to the scene of such accident, and to make such investigation and recommendations and require such alterations of the machinery and appliances causing such accident as may be necessary to prevent a recurrence of said accident, and for the safety and protection of other persons there employed. In case any person is killed in an accident as described in the foregoing, and a coroner's inquest is held, the state factory inspector or his deputy may attend and participate in the inquest, upon the request of the coroner and county attorney, and ascertain by the testimony before the coroner the cause of such accident, for the purpose of securing such information as may be necessary to prevent a repetition of such accident. [G. S. 1915, § 5943.]

The commissioner of labor and industry is *ex officio* state factory inspector (§ 165). This act, it will be noted, applies only in case of loss of life or serious personal injury (§ 11) and does not apply to the coal or salt mines of the state (§ 14). The act creating the department of labor and industry, however, authorizes the commissioner "to furnish and deliver a written or printed list of interrogatories to any person, company, or the proper officer of any corporation operating within the state, and require full and complete answers to be made thereto, and returned under oath" (§173). Under the latter act the commissioner of labor and industry may require answers to interrogatories from all industries, including the coal and salt mines, and concerning any and all accidents. The commissioner has therefore prepared a form for the reporting of all industrial accidents, and requests an immediate report from every employer. A prompt reporting of all accidents as they occur will prevent the penalty from attaching for failure to report, as to industries required to report under this act, and will obviate the necessity of the commissioner submitting a formal demand for each report as to all other industries.

In order to furnish a simple rule for the determination of what accidents shall be

reported, the commissioner has prescribed that only accidents causing a loss of more than one day's employment or requiring medical or surgical attention shall be reported. The forms for the reporting of accidents will be furnished to any employer upon request to the commissioner of labor and industry.

§ 12. State factory inspector to include report of accidents and recommendations in such cases in annual report. The state factory inspector shall incorporate in his annual report to the governor a report of said accidents occurring, the cause and casualties of said accidents as ascertained, whether fatal or nonfatal, and a record of the recommendations made in such cases. [G. S. 1915, § 5944.]

§ 13. Penalty for failure of owner, agent, manager, etc., to send notices and statements required. Any owner, agent, manager, superintendent or foreman in charge of properties as described in section 1 of this act, where accidents shall have occurred, who shall fail or refuse to send such notices and statements and otherwise comply with the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in jail not less than thirty days nor more than ninety days, or by both such fine and imprisonment, in the discretion of the court. [G. S. 1915, § 5945.]

"Section 1 of this act," referred to herein, is § 11, *supra*.

§ 14. Act not to apply to coal or salt mines. *Provided*, That this act shall not apply to the coal or salt mines of this state. [G. S. 1915, § 5946.]

See note to § 11, *supra*.

CHAPTER 3.—APPRENTICES.

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| <p>§15. Person bound by indenture to serve as clerk or apprentice shall serve for time specified.</p> <p>16. Infants may bind themselves with approbation of probate court.</p> <p>17. Affidavit of master to be indorsed on indenture.</p> <p>18. Cases in which mother may give consent or retain custody and control of child.</p> <p>19. Acts of incapacity, desertion or drunkenness to be decided in probate court before a jury; costs when charges not found to be true.</p> <p>20. Poor children may be bound by probate court in cases specified.</p> <p>21. Orphan or minor may be bound by guardian; counterpart of indenture to be deposited with clerk of probate court.</p> <p>22. Master not to remove apprentice out of this state; clause to be inserted in indenture binding out orphan or poor child; branches to be taught; property to be given to apprentice.</p> <p>23. Probate court to enforce terms of indenture, etc.; court to redress grievances.</p> <p>24. Age of apprentice to be inserted in indenture.</p> <p>25. Indenture not entered into according to law void as to apprentice.</p> <p>26. Probate court to receive complaints of apprentices; trial by jury; make order to relieve party injured.</p> <p>27. Probate court may discharge apprentice; order concerning money, etc., paid or contracted to be paid; court to bind apprentice again.</p> | <p>§28. Probate court to hear complaints of masters against apprentices; punishment of apprentice; order to make restitution; costs.</p> <p>29. Warrant issued when apprentice absconds or rebels against master, etc.; complaint.</p> <p>30. Return of warrant in vacation; bail for appearance of apprentice; commitment in default; master consent to discharge; payment of costs.</p> <p>31. Forfeiture by person counseling, persuading, etc., any apprentice to run away; recovery of forfeiture by master.</p> <p>32. Forfeiture by person entertaining, harboring or concealing run-away apprentice; recovery of forfeiture by master.</p> <p>33. Executor may bind out child with consent of mother; executor may raise child with consent of mother.</p> <p>34. Master about to remove apprentice out of this state; warrant issued; master may be required to enter into recognizance.</p> <p>35. Master failing to enter into recognizance; court to commit custody of apprentice to other person.</p> <p>36. Master wishing to remove out of this state or quit trade; apprentice brought before court; discharge of apprentice; court may bind again.</p> <p>37. Apprentice bound to two masters; indenture survive on death of one master; executor bring apprentice into court on death of all.</p> <p>38. Apprentice absenting himself from service of master; action for damages by master; time for bringing such action.</p> |
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GENERAL STATUTES OF 1868, CH. 5.

AN ACT concerning apprentices.

§ 15. Person bound by indenture to serve as clerk or apprentice shall serve for time specified. Every person bound by indenture of his free will, with the consent of his father, or if he be dead, of the mother or guardian, and signified by such parent or guardian signing the same, or by the probate court, as hereinafter directed, to serve as clerk or apprentice, in any profession, trade or employment, until the age of eighteen years, or, if a female, until the age of sixteen years, or for a shorter time, shall be bound to serve the time specified in such indenture. [G. S. 1915, § 384.]

§ 16. Infants may bind themselves with approbation of probate court. Any infant, having no parent or guardian, may, with the approbation of the probate court, indorsed on the indenture, bind himself an apprentice until he arrives at the age of eighteen years, or, if a female, at the age of sixteen years. [G. S. 1915, § 385.]

§ 17. Affidavit of master to be indorsed on indenture. Upon the execution of every indenture of apprenticeship, the person to whom the apprentice is bound shall make an affidavit that he will faithfully perform the duties required by the indenture and enjoined on him by law, which affidavit shall be indorsed on the indenture. [G. S. 1915, § 386.]

§ 18. Cases in which mother may give consent or retain custody and control of child. When the father has no legal capacity to give consent, or when he shall willfully have abandoned his family for six months, without making suitable provisions for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent as if the father was dead, or the mother may retain the custody and control of the child. [G. S. 1915, § 387.]

§ 19. Acts of incapacity, desertion or drunkenness to be decided in probate court before a jury; costs when charges not found to be true. Acts of incapacity, desertion or drunkenness shall be decided in the probate court by a jury, before the indenture shall take effect, and an indorsement on the indenture, under the seal of the court, that the same are proved, shall be sufficient evidence of the mother's power to give such consent, or retain control of said child; but if the jury do not find the charge of incapacity, drunkenness or desertion to be true, the person at whose instance such proceedings may have been had shall pay all costs attending the same. [G. S. 1915, § 388.]

§ 20. Poor children may be bound by probate court in cases specified. When any poor child is, or may be, chargeable to the county, or shall beg for alms, or when the parents of such children are poor, and their father an habitual drunkard, or if there be no father, when the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood, it shall be lawful for the probate court to bind such child an apprentice until, if a male, he arrives to the age of eighteen years, and if a female, to the age of sixteen years. [G. S. 1915, § 389.]

Order not attacked collaterally, notice to parents not essential. *Ackley v. Tinker*, 26 K. 485.

§ 21. Orphan or minor may be bound by guardian; counterpart of indenture to be deposited with clerk of probate court. Every orphan or minor, who has not estate sufficient for his maintenance, may be bound by

his guardian, under the order and direction of the probate court, and the indenture of binding such infant shall be as effectual as if such infant were of full age; and the counterpart of such indenture shall, for the benefit of the infant so bound, be deposited with the clerk of the probate court in which such binding shall take place, for safe-keeping. [G. S. 1915, § 390.]

§ 22. Master not to remove apprentice out of this state; clause to be inserted in indenture binding out orphan or poor child; branches to be taught; property to be given to apprentice. It shall not be lawful for any master to remove an apprentice out of this state, and in all indentures by the probate court, for binding out any orphan or poor child as an apprentice, there shall be inserted, among other covenants, a clause to the following effect: That every master to whom such child shall be bound shall cause such child to be taught to read and write, and the ground rules of arithmetic, the compound rules and the rule of three, and at the expiration of his time of service shall give him or her a new Bible and two new suits of clothes, of the value of forty dollars, and ten dollars in current money of the United States. [G. S. 1915, § 391.]

§ 23. Probate court to enforce terms of indenture, etc.; court to redress grievances. The probate court shall see that the terms of the indenture, and the covenants therein contained, be fulfilled, and that such child be not ill-used; and the said court is hereby required to inquire into and redress any grievances that may occur in the premises, in such manner as is prescribed by law. [G. S. 1915, § 392.]

§ 24. Age of apprentice to be inserted in indenture. The age of every apprentice shall be inserted in the indenture. [G. S. 1915, § 393.]

§ 25. Indenture not entered into according to law void as to apprentice. All indentures entered into otherwise than according to law shall be utterly void, so far as concerns the apprentice therein bound. [G. S. 1915, § 394.]

§ 26. Probate court to receive complaints of apprentices; trial by jury; make order to relieve party injured. The probate court shall receive the complaints of apprentices who reside within the county, against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging, want of instruction in their trade or profession, or that they are in danger of being removed out of this state, or the violation of the indentures of apprenticeship; and may hear and determine such cases by a jury, and make such order therein as will relieve the party injured, in future. [G. S. 1915, § 395.]

§ 27. Probate court may discharge apprentice; order concerning money, etc., paid or contracted to be paid; court to bind apprentice again. The probate court shall have power, when circumstances require it, to discharge an apprentice from his apprenticeship; and in case any money or other thing has been paid, or contracted to be paid, by either party, in relation to such apprenticeship, the court shall make such order concerning the same as shall seem just and reasonable. If the apprentice so discharged shall have been originally bound by the probate court, it shall be the duty of the court, if they judge necessary, again to bind such apprentice. [G. S. 1915, § 396.]

§ 28. Probate court to hear complaints of masters against apprentices; punishment of apprentice; order to make restitution; costs. The court

shall, in like manner, hear and determine the complaint of masters against their apprentices, for desertion without good cause, misconduct or ill-behavior, and may punish such apprentice according to the nature and aggravation of his offense; and if the offense be willful desertion, without cause, the court may, in addition to other punishments, order the apprentice guilty thereof to make restitution by the payment of a sum not exceeding ten dollars, for each month he may be so absent, to be collected as other debts, after such apprentice shall have become of full age. The awarding of costs in the proceedings under this section shall be in the discretion of the court. [G. S. 1915, § 397.]

§ 29. Warrant issued when apprentice absconds or rebels against master, etc.; complaint. If any apprentice shall abscond or depart from the service of his master without leave, or shall rebel against or assault his master, any judge or justice of the peace, on complaint made, and sufficient cause shown, on oath, by the master, or any one in his behalf, shall issue a warrant directed to any sheriff or constable within this state, or any discreet or responsible person, to be named in the warrant, to execute the same in any part of this state. [G. S. 1915, § 398.]

§ 30. Return of warrant in vacation; bail for appearance of apprentice; commitment in default; master consent to discharge; payment of costs. If, upon the return of any such warrant, the probate court shall not be in session, it shall be the duty of the person serving the same to carry the apprentice before some judge or justice of the peace of said county, who shall take bail for the appearance of the apprentice at the next term of the court, to answer to the complaint of the master; or for want of bail, to commit him to prison until the sitting of the next court, unless the master shall consent to his discharge. The costs of the process, service and commitment shall be paid, in the first instance, by the master; but the court, upon the final hearing, may order such apprentice to make restitution of such costs, by service, after the expiration of the time for which he shall have been bound. [G. S. 1915, § 399.]

§ 31. Forfeiture by person counseling, persuading, etc., any apprentice to run away; recovery of forfeiture by master. Every person who shall counsel, persuade, entice or assist any apprentice to run away or absent himself from the service of his master shall forfeit not less than twenty nor more than five hundred dollars, to be sued for and recovered, with costs, by such master, in any court having jurisdiction thereof. [G. S. 1915, § 400.]

§ 32. Forfeiture by person entertaining, harboring or concealing run-away apprentice; recovery of forfeiture by master. Every person who shall entertain, harbor or conceal any apprentice, knowing such apprentice to be [a] run-away, or to have absented himself from the service of his master without leave, shall forfeit one dollar for every day's entertainment, harboring or concealing, to be sued for and recovered, by action of debt, with costs, by such master, in any court having jurisdiction thereof. [G. S. 1915, § 401.]

§ 33. Executor may bind out child with consent of the mother; executor may raise child with consent of mother. The executor who, by the last will of a father, is directed to bring up his child to some trade or calling, shall have power, with the consent of the mother, if living, to bind such child by indenture in like manner as the father, if living, might

have done; or shall raise such child according to such direction, if consented to by the mother. [G. S. 1915, § 402.]

§ 34. Master about to remove apprentice out of this state; warrant issued; master may be required to enter into recognizance. If it shall appear to any judge or justice of the peace, upon the oath of any competent person, that any master is about to remove, or cause to be removed, any apprentice out of this state, such judge or justice shall issue his warrant and cause such master to be brought before him; and if, upon examination, it shall appear that such apprentice is in danger of being removed without this state, the judge or justice may require the master to enter into recognizance with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice shall not be removed without this state, and that said master will appear with the apprentice before the probate court, at the next term thereof, and abide the decision of the court thereon, which recognizance shall be returned to the probate court; and the court shall proceed therein in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance, and otherwise proceed according to law and justice. [G. S. 1915, § 403.]

§ 35. Master failing to enter into recognizance; court to commit custody of apprentice to other person. If the master, when brought before the judge or justice, fails to enter into recognizance when required so to do, such judge or justice shall commit the custody of such apprentice to some other person, who will enter into recognizance. [G. S. 1915, § 404.]

§ 36. Master wishing to remove out of this state or quit trade; apprentice brought before court; discharge of apprentice; court may bind again. Whenever any master of an apprentice shall wish to remove out of this state, or quit his trade or business, he shall appear with his apprentice before the probate court of the proper county; and if the court be satisfied that the master has done justice to said apprentice for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person. [G. S. 1915, § 405.]

§ 37. Apprentice bound to two masters; indenture survive on death of one master; executor bring apprentice into court on death of all. When any person shall become bound as an apprentice to two or more persons, and one or more of them die before the expiration of such term of service, the indenture shall survive to and against such survivor; and in case of the death of all masters in any such indenture, before the expiration of the term of service, the executor or administrator shall bring the indenture and apprentice named therein before the probate court of the proper county, and such court shall, if necessary, again bind such apprentice to some other person. [G. S. 1915, § 406.]

§ 38. Apprentice absenting himself from service of master; action for damages by master; time for bringing such action. If any apprentice shall absent himself from the service of his master without leave, or shall run away so that the master shall be deprived of his service during the remainder of the time, or any part thereof, for which he was bound to serve, the master of such apprentice may have an action, in any court of competent jurisdiction, against such apprentice, after he arrives at full age, for the damages that such master may have sustained by reason of the absence of such apprentice; such action shall be brought within two years after such apprentice arrives at full age. [G. S. 1915, § 407.]

CHAPTER 4.—ARBITRATION.

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| <p>§39. District court or judge shall establish tribunal for voluntary arbitration; petition presented; disputes between employers and employed.</p> <p>40. Petition; form; who shall sign; inquiry by judge; order.</p> <p>41. Petition properly signed; license granted; members of board named; license entered on journal.</p> <p>42. Duration of tribunal; jurisdiction; vacancies; umpire appointed; duties of umpire; award of tribunal final; impeached for fraud, etc.</p> <p>43. Organization of tribunal; chairman; secretary.</p> <p>44. Compensation of members of tribunal; sessions held at county seat; suitable room furnished.</p> | <p>§45. Submission of matters to chairman; filing; chairman administer oaths to witnesses; provide for examination of books, etc.; powers of umpire.</p> <p>46. Tribunal given power to make rules and to fix sessions and adjournments; chairman to convene extra session.</p> <p>47. Submission of matters to umpire; questions in writing; award made matter of record by filing, etc.; judgment on award; enforcement; award impeached.</p> <p>48. Form of petition for tribunal.</p> |
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LAWS OF 1886, CH. 28.

AN ACT to establish boards of arbitration, defining their powers and duties.

§ 39. District court or judge shall establish tribunal for voluntary arbitration; petition presented; disputes between employers and employed. That the district court of each county, or a judge thereof in vacation, shall have the power, and upon the presentation of a petition as hereinafter provided it shall be the duty, of said court or judge to issue a license or authority for the establishment within and for any county within the jurisdiction of said court, of a tribunal for voluntary arbitration and settlements of disputes between employers and employed in the manufacturing, mechanical, mining and other industries. [G. S. 1915, § 421.]

§ 40. Petition; form; who shall sign; inquiry by judge; order. The said petition shall be substantially in the form hereinafter given, and the petition shall be signed by at least five persons employed as workmen, or by two or more separate firms, individuals, or corporations within the county who are employers within the county: *Provided*, That at the time the petition is presented, the judge before whom said petition is presented may, upon motion, require testimony to be taken as to the representative character of said petitioners; and if it appears that the requisite number of said petitioners are not of the character they represent themselves to be, the establishment of the said tribunal may be denied, or he may make such other order in that behalf as shall to him seem fair to both sides. [G. S. 1915, § 422.]

§ 41. Petition properly signed; license granted; members of board named; license entered on journal. If the said petition shall be signed by the requisite number of either employers or workmen, and be in proper form, the judge shall forthwith cause to be issued a license, authorizing the existence of such a tribunal and containing the names of four persons to compose the tribunal, two of whom shall be workmen and two employers, all residents of said county, and fixing the time and place of the first meeting thereof; and an entry of the license so granted shall be made upon the journal of the district court of the county in which the petition originated. [G. S. 1915, § 423.]

§ 42. Duration of tribunal; jurisdiction; vacancies; umpire appointed; duties of umpire; award of tribunal final; impeached for fraud, etc. Said tribunal shall continue in existence for one year from the date of the

license creating it, and may take jurisdiction of any dispute between employers and workmen in any mechanical, manufacturing, mining, or other industry, who may submit their disputes in writing to such tribunal for decision. Vacancies occurring in the membership of the tribunal shall be filled by the judge or court that licensed said tribunal. Disputes occurring in one county may be referred to a tribunal already existing in an adjoining county. Said court at the time of the issuance of said license shall appoint an umpire for said tribunal, who shall be sworn to impartially decide all questions that may be submitted to him during his term of office. The umpire shall be called upon to act after disagreement is manifested in the tribunal by failure to agree during three meetings held and full discussion had. His award shall be final and conclusive upon such matters only as are submitted to him in writing and signed by the whole of the members of the tribunal, or by parties submitting the same. And the award of said tribunal shall be final and conclusive upon the question so submitted to it: *Provided*, That said award may be impeached for fraud, accident, or mistake. [G. S. 1915, § 424.]

§ 43. Organization of tribunal; chairman; secretary. The said tribunal when convened shall be organized by the selection of one of their number as chairman, and one as secretary, who shall be chosen by a majority of the members. [G. S. 1915, § 425.]

§ 44. Compensation of members of tribunal; sessions held at county seat; suitable room furnished. The members of the tribunal and the umpire shall each receive as compensation for their services, out of the treasury of the county in which said dispute shall arise, two dollars for each day of actual service. The sessions of said tribunal shall be held at the county seat of the county where the petition for the same was presented, and a suitable room for the use of said tribunal shall be provided by the county commissioners. [G. S. 1915, § 426.]

§ 45. Submission of matters to chairman; filing; chairman administer oaths to witnesses; provide for examination of books, etc.; powers of umpire. All submissions of matters in dispute shall be made to the chairman of said tribunal, who shall file the same. The chairman of the tribunal shall have power to administer oaths to all witnesses who may be produced, and a majority of said tribunal may provide for the examination and investigation of books, documents and accounts necessary, material and pertaining to the matters in hearing before the tribunal, and belonging to either party to the dispute. The umpire shall have power when necessary to administer oaths and examine witnesses, and examine and investigate books, documents and accounts pertaining to the matters submitted to him for decision. [G. S. 1915, § 427.]

§ 46. Tribunal given power to make rules and to fix sessions and adjournments; chairman to convene extra session. The said tribunal shall have power to make, ordain and enforce rules for the government of the body when in session, to enable the business to be proceeded with in order, and to fix its sessions and adjournments, but such rules shall not conflict with this statute nor with any of the provisions of the constitution and laws of the state: *Provided*, That the chairman of said tribunal may convene said tribunal in extra session at the earliest day possible, in cases of emergency. [G. S. 1915, § 428.]

§ 47. Submission of matters to umpire; questions in writing; award made matter of record by filing, etc.; judgment on award; enforcement; award impeached. Before the umpire shall proceed to act, the question or questions in dispute shall be plainly defined in writing and signed

by the members of the tribunal or a majority thereof, or by the parties submitting the same; and such writing shall contain the submission of the decision thereof to the umpire by name, and shall provide that his decision thereon after hearing shall be final; and said umpire must make his award within five days from the time the question or questions in dispute are submitted to him. Said award shall be made to the tribunal; and if the award is for a specific sum of money, said award of money or the award of the tribunal, when it shall be for a specific sum, may be made a matter of record by filing a copy thereof in the district court of the county wherein the tribunal is in session. When so entered of record it shall be final and conclusive, and the proper court may, on motion of any one interested, enter judgment thereon; and when the award is for a specific sum of money may issue final and other process to enforce the same: *Provided*, That any such award may be impeached for fraud, accident, or mistake. [G. S. 1915, § 429.]

§ 48. **Form of petition for tribunal.** The form of the petition praying for a tribunal under this act shall be as follows: "*To the District Court of——County* [or a judge thereof, as the case may be]: The subscribers hereto being the number and having the qualifications required in this proceeding, being desirous of establishing a tribunal of voluntary arbitration for the settlement of disputes in the manufacturing, mechanical, mining and other industries, pray that a license for a tribunal of voluntary arbitration may be issued, to be composed of four persons and an umpire, as provided by law." [G. S. 1915, § 430.]

CHAPTER 5.—BARBER BOARD.

§ 49. Unlawful to follow occupation of barber without having obtained certificate of registration; application of act to persons engaged in practice April 30, 1913.

50. Board of examiners created; appointment of members of board; qualifications of members; members to appear before state board of health before being appointed; knowledge of contagious and infectious diseases; rejection of proposed appointee; certificate of board of health; term of office of examiners; sanitary rules; copy of rules furnished; members to give bond and take oath; vacancies.

51. Officers of board; headquarters; seal; administration of oaths; majority of board may perform duties.

52. Compensation of members of board; traveling expenses; payment of such amounts; no claim to be made against the state.

53. Board to report quarterly to the governor; money in excess of five hundred dollars to be paid over to the state treasurer for public schools.

54. Board to hold public examinations; publication of notice of such meetings.

55. Persons engaged in occupation of barber April 30, 1913, to file affidavit, etc.; fee; issuance of certificate of registration; annual renewal of certificate; fee; fee for every license and certificate issued.

§ 56. Application by persons desiring to pursue occupation of barber; fee; qualifications of applicant; examination; issuance of certificate of registration; board to be judges concerning barber schools and colleges; persons making application allowed to practice until next regular examination by board; permit; extension of permit for good cause.

57. Act not to prevent person serving as apprentice under license issued by board nor from attending school or college teaching trade.

58. Board to furnish card or certificate bearing seal of board, etc.; holder of card, etc., to post same in conspicuous place in front of working chair; board to keep register of persons to whom certificates, permits, etc., issued; inspection of record; revocation of licenses; grounds for revocation; notice and opportunity for hearing and production of testimony; reissuance of certificate or permit; application.

59. Penalty for practicing occupation of barber without certificate, employing person without certificate, failing to keep certificate, etc., displayed, failing to comply with sanitary rules or for violation of act.

LAWS OF 1913, CH. 292.

AN ACT creating a board of examiners to examine and license barbers; prescribing its duties; providing for a license to barbers to practice their trade or calling, and providing punishment for a violation thereof.

§ 49. Unlawful to follow occupation of barber without having obtained certificate of registration; application of act to persons engaged in practice April 30, 1913. It shall be unlawful for any person to follow the occupation of a barber in this state unless he shall have first obtained a certificate of registration, as provided in this act: *Provided, however,* That nothing in this act contained shall apply to or affect any person who is now actually engaged in such occupation, except as hereinafter provided. [G. S. 1915, § 10326.]

§ 50. Board of examiners created; appointment of members of board; qualifications of members; members to appear before state board of health before being appointed; knowledge of contagious and infectious diseases; rejection of proposed appointee; certificate of board of health; term of office of examiners; sanitary rules; copy of rules furnished; members to give bond and take oath; vacancies. A board of examiners, to consist of three members who are now and have been citizens of this state for at least three years next preceding the date of their appointment, is hereby created to carry out the purposes and to enforce the provisions of this act. Such board shall be appointed by the governor: *Provided,* That all barbers shall have had at least five years' practical experience as a barber prior to his appointment. Each member, before being so appointed, shall appear before the state board of health, whose duty it shall be to determine whether or not such proposed member possesses sufficient knowledge of contagious and infectious diseases to enable such member to pass judiciously upon the qualifications of others in the occupation of barber. If such board of health shall reject such proposed appointee, then the governor shall select another in his stead as before. If the appointment be approved by the board, said board shall issue a certificate to that effect, and all appointments made under the provisions of this act shall date from the approval thereof as aforesaid by said board. Each member of said board shall serve for a term of three years and until his successor is appointed and qualified, except in the case of the first board, whose members shall serve one, two and three years respectively, as specified in their appointment. Said board shall, with the approval of the state board of health, prescribe such sanitary rules as it may deem necessary to prevent spreading of infectious or contagious diseases. A copy of such rules shall be furnished each person to whom a certificate of registration is granted. Each member of said board shall, before entering upon the discharge of his duties, give a bond in the sum of two thousand dollars, with a surety or sureties, to be approved by the secretary of state, conditioned for the faithful performance of his duties, and shall take the oath provided by law for public officers. Vacancies upon said board, caused by death, resignation or other cause, shall be filled by appointment in the same manner as provided herein for regular appointments. [G. S. 1915, § 10327.]

§ 51. Officers of board; headquarters; seal; administration of oaths; majority of board may perform duties. Said board shall elect a president, secretary and treasurer; shall have its headquarters at such place in the state as the board may determine; shall have a common seal, and the secretary and president shall have the power to administer oaths. A majority of said board may perform the duties and exercise the powers

devolving upon said board, under the provisions hereof. [G. S. 1915, § 10328.]

§ 52. Compensation of members of board; traveling expenses; payment of such amounts; no claim to be made against the state. Each member of said board shall receive a compensation of five dollars per day for his service, and such traveling expenses as may have been necessarily incurred in the proper discharge of his duties, and shall be paid out of any money in the hands of the treasurer of said board: *Provided*, That no charge or claim shall be made against the state for any such service rendered or expense incurred. [G. S. 1915, § 10329.]

§ 53. Board to report quarterly to the governor; money in excess of five hundred dollars to be paid over to state treasurer for public schools. Said board shall report quarterly to the governor of the state a full statement of the receipts and disbursements of the board, beginning April 1, 1913, and a full statement of its doings and proceedings and such recommendations as it may deem proper, looking to the better carrying out of the intent and purposes of this act. Any money in the hands of the treasurer of said board at the time of making such report, in excess of five hundred dollars, shall be paid over to the state treasurer for the maintenance if [of] the public schools of the state. [G. S. 1915, § 10330.]

§ 54. Board to hold public examinations; publication of notice of such meetings. Such board shall hold public examinations at least four times in each year, at such times and places as it may deem advisable, notice of such meetings to be given by publication thereof, in at least two newspapers published in this state, at least ten days prior to such meetings. [G. S. 1915, § 10331.]

§ 55. Persons engaged in occupation of barber April 30, 1913, to file affidavit, etc.; fee; issuance of certificate of registration; annual renewal of certificate; fee; fee for every license and certificate issued. Every person now engaged in the occupation of barber in this state shall, within ninety days after approval of this act, file with the secretary of said board an affidavit, setting forth his name, residence and the length of time and the place where he has practiced such occupation, and shall pay to the treasurer of said board one dollar; thereupon a certificate of registration, entitling him to pursue such avocation during the calendar year ending December thirty-first, and each such barber, thirty days prior to the expiration of their respective certificate, shall make application for the renewal of the same, stating the number of expiring certificate, and shall in each case pay to the treasurer of said board the sum of one dollar therefor. For any and every license or certificate given or issued by the board a fee of one dollar shall be paid by the person receiving the same. [G. S. 1915, § 10332.]

§ 56. Application by persons desiring to pursue occupation of barber; fee; qualifications of applicant; examination; issuance of certificate of registration; board to be judges concerning barber schools and colleges; persons making application allowed to practice until next regular examination by board; permit; extension of permit for good cause. Any person not following the occupation of a barber at the time of the taking effect of this act, desiring to pursue such occupation in this state, shall make application to said board therefor, and shall pay to the treasurer of said board an examination fee of five dollars, and shall present himself at the then next regular meeting of the board, for the examination; whereon said board shall proceed to examine such person and, being satisfied that

he is above the age of nineteen years, of good moral character, free from contagious or infectious diseases, has either studied the trade for one year as an apprentice, under a qualified and practicing barber, or studied the trade for at least one year in a recognized barber school or college, under instructions of a qualified barber, or practiced the trade in another state for at least one year, and is possessed of the requisite skill in such trade to properly perform all of the duties thereof, including his ability in shaving, hair cutting, preparation of tools, and all duties and services incident thereto, and is possessed of sufficient knowledge concerning the common diseases of the face and skin, to avoid the aggravation and spreading thereof, shall enter his name in the register hereinafter provided for, and shall issue to him a certificate of registration, authorizing him to practice said trade in this state: *Provided*, That whenever it appears that applicant has acquired his knowledge of said trade in a barber school or college the board shall be judges of whether said barber school or college is properly appointed and conducted to give sufficient training in such trade. All persons making such application for examination under the provisions of this act shall be allowed to practice the occupation of barbering until the meeting for the next regular examination by the said board, and no longer, and the secretary shall give him a permit to do so: *Provided, however*, That such time may be extended by the board for good cause shown. [G. S. 1915, § 10333.]

§ 57. Act not to prevent person serving as apprentice under license issued by board nor from attending school or college teaching trade. Nothing in this act shall prohibit any person from serving as an apprentice in such trade under license issued by the board, under a barber authorized to practice, nor from attending as a student in any school or college teaching such trade. [G. S. 1915, § 10334.]

§ 58. Board to furnish card or certificate bearing seal of board, etc.; holder of card, etc., to post same in conspicuous place in front of working chair; board to keep register of persons to whom certificates, permits, etc., issued; inspection of record; revocation of licenses; grounds for revocation; notice and opportunity for hearing and production of testimony; reissuance of certificate or permit; application. Said board shall furnish to each person to whom a certificate of registration is issued a card or certificate, in such form as it shall adopt, bearing the seal of the board and the signature of its president and secretary, certifying that the holder thereof is entitled to practice the occupation of barber in this state, and it shall be the duty of the holder of such card or insignia to post the same in a conspicuous place in front of his working chair where it may be readily seen by all persons whom he may serve. Said board shall keep a register, in which shall be entered the names of all persons to whom certificates are issued, and to whom permits for serving apprenticeship, or as students, under the provisions of this act, and said register shall, at all times, be open to public inspection. Said board shall have power to revoke any certificate of registration granted by it under this act, for habitual drunkenness, gross incompetency, failure or refusal to properly provide or guard against contagious or infectious disease, or the spreading thereof, in the practice of the occupation aforesaid, violation of the rules of the board, or for any extortion or overcharge practiced: *Provided*, That before any certificate or permit shall be revoked the holder thereof shall have notice in writing of the charge or charges against him and shall, at a day specified in said notice, at least five days after the

service thereof, be given a public hearing on said charge by said board, and full opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person, firm or corporation whose certificate or permit has been revoked may, after the expiration of ninety days, apply to have the same reissued, upon a satisfactory showing that the disqualification has ceased. [G. S. 1915, § 10335.]

§ 59. Penalty for practicing occupation of barber without certificate, employing person without certificate, failing to keep certificate, etc., displayed, failing to comply with sanitary rules or for violation of act. Any person practicing the occupation of barber without having obtained a certificate of registration as provided in this act, or knowingly employing a person to serve as barber, who has not such certificate, or failing to keep the certificate, card or permit mentioned in this act properly displayed, or failing to comply with such sanitary rules as the board, in conjunction with the state board of health, prescribes, or for the violation of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, they shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than ninety days, or both such fine and imprisonment. [G. S. 1915, § 10336.]

CHAPTER 6.—BLACKLISTING, ETC.

- §60. Employer not to prevent or attempt to prevent discharged employee from obtaining employment from other person, company, etc.
61. Cause of discharge to be furnished; provision held unconstitutional and void.
62. Penalty for violation of this act.

- §63. Liability of employer to party injured where employer found guilty of violation of act; attorney fee taxed as part of costs.
64. Laws of 1897, ch. 120, and Laws of 1903, ch. 222, declared unconstitutional and void.

LAWS OF 1897, CH. 144.

AN ACT to prevent blacklisting by employers of labor, providing penalties therefor, and for the recovery of damages.

§ 60. Employer not to prevent or attempt to prevent discharged employee from obtaining employment from other person, company, etc. Any employer of labor in this state, after having discharged any person from his service, shall not prevent or attempt to prevent by word, sign or writing of any kind whatsoever any such discharged employee from obtaining employment from any other person, company or corporation, except by furnishing in writing, on request, the cause of such discharge. [G. S. 1915, § 5949.]

§ 61. Cause of discharge to be furnished; provision held unconstitutional and void. [The provision of this section, "that any employer of labor in this state shall, upon the request of a discharged employee, furnish in writing the true cause or reason for such discharge," was declared unconstitutional and void by the supreme court of Kansas in the case of *Railway Co. v. Brown*, 80 Kan. 312.]

§ 62. Penalty for violation of this act. Any employer of labor, his agent or employee, who shall violate the provisions of this act shall be guilty of a misdemeanor, and shall upon conviction be fined for each offense the sum of one hundred dollars, and thirty days' imprisonment in the county jail. [G. S. 1915, § 5951.]

§ 63. Liability of employer to party injured where employer found guilty of violation of act; attorney fee taxed as part of costs. Any person, firm or corporation found guilty of the violation of sections one and two of this act, shall be liable to the party injured to an amount equal to three times the sum he may be injured, and such employers of labor shall also be liable for a reasonable attorney fee, which shall be taxed as part of the costs in the case. [G. S. 1915, § 5952.]

LAWS OF 1897, CH. 120, AND LAWS OF 1903, CH. 222.

§ 64. Laws of 1897, ch. 120, and Laws of 1903, ch. 222, declared unconstitutional and void. [*Laws of 1897, ch. 120*, made it unlawful to discharge an employee because he belonged to a lawful labor organization, and provided for the recovery of damages for such discharge. The act was declared unconstitutional and void in the case of *Brick Co. v. Perry*, 69 Kan. 297.]

[*Laws of 1903, ch. 222*, made it unlawful to coerce, require, demand or influence person to enter into any agreement not to become or remain a member of any labor organization or association as a condition of securing employment or continuing in employment, and provided a penalty for the violation of the provisions of the act. This act was held, by the supreme court of Kansas, to be valid and to violate no constitutional right, in the case of *The State v. Coppage*, 87 Kan. 752. On appeal to the supreme court of the United States the decision was reversed and the act declared unconstitutional and void, in the case of *Coppage v. Kansas*, 236 U. S. 1.]

CHAPTER 7.—CHAIRS, ETC., FOR WOMEN AND GIRLS.

§ 65. Employers of women and girls as clerks or help to furnish chairs, stools, etc., for use of such employees when not actively engaged.

§ 66. Penalty for violation of preceding section.

LAWS OF 1901, CH. 187.

AN ACT requiring proprietors, managers and persons having charge of establishments or places where women or girls are employed to provide chairs, stools or other contrivances for the seating of such employees, and to permit them to use the same for rest when not actively engaged in duties inconsistent with such requirement, and providing penalties for the violation thereof.

§ 65. Employers of women and girls as clerks or help to furnish chairs, stools, etc., for use of such employees when not actively employed. The proprietor, manager, or person having charge of any mercantile establishment, store, shop, hotel, restaurant or other place where women or girls are employed as clerks or help therein in this state shall provide chairs, stools or other contrivances for the comfortable use of such female employees, and shall permit the use of the same by such female employees for the preservation of their health and for rest when not actively employed in the discharge of their respective duties. [G. S. 1915, § 5947.]

§ 66. Penalty for violation of preceding section. Any proprietor, manager or other person violating the preceding section of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than ten dollars nor more than one hundred dollars. [G. S. 1915, § 5948.]

CHAPTER 8.—CHILD LABOR.*

- §67. Child under fourteen not to be employed in factory, workshop, theatre, mill, cannery, packing house or operating elevator; not to be employed in any business during school hours.
68. Child under sixteen not to be employed in mine or quarry, or any dangerous occupation.
69. Child under sixteen not to be employed before 7 a.m. or after 6 p.m.; number of hours employed in one day or one week.
70. Employers required to obtain and keep on file work permits for children under sixteen.
71. Employer of children under sixteen to post notice of hours of labor, hours allowed for meals, etc.; form of notice; noncompliance with notice deemed violation of act.
72. Superintendent of schools or authorized representative, or judge of juvenile court, to issue work permit only after conditions complied with; signed statement stating occupation; school record or examination required; evidence of age.
73. Work permits, matters to be stated therein; signed by child in presence of officer.
74. Permits to be issued on blanks furnished; duplicate returned to commissioner of labor with statement; permit a protection to employer; exception.
75. Employer to return permit to officer on termination of employment; transmission to commissioner of labor.
76. Revocation of permit by commissioner of labor; notice to employer of child.
77. Duty of factory inspector, inspector of mines and their deputies to inspect permits and examine children employed; complaints to enforce act; duty of county attorney.
- §78. Penalty for employing child in violation of act or permitting or conniving at such violation.
79. Sections repealed by this act; repeal of acts in conflict with this act.
80. Penalty for inducing or permitting child under eighteen years to assist in giving public exhibition of hypnotism, mesmerism, animal magnetism, etc.
81. Disposing of child with view to its being employed as an acrobat, gymnast, contortionist, circus-rider, beggar, pauper, street singer, etc.; taking, receiving, employing, etc., child for such purposes; misdemeanor; punishment.
82. Parents, guardians, etc., required to send children between ages of eight and fifteen to public or private school; required attendance of child fourteen years or older employed for support of himself, etc.; children having graduated from common schools exempt; children physically or mentally incapacitated; examination by physician.
83. Duty of truant officer when child absent from school; written notice to parent or guardian, etc.; service of notice; complaint if act not complied with in five days; jurisdiction of juvenile court, etc.; employment of children between ages of eight and fifteen years; school authorities may permit temporary absences in extreme cases of emergency or domestic necessity; penalty for violation of provisions of act; county attorneys and city attorneys to prosecute complaints.
84. Period of minority in males and females.
85. Payment to minor for services performed under contract with such minor; full satisfaction.

* The federal act, passed September 1, 1916, has been declared unconstitutional and void by the supreme court of the United States. The act was entitled "An act to prevent interstate commerce in the products of child labor, and for other purposes," and contained the following provisions, all of which are now, of course, inoperative. (The act was included in this note before it had been passed upon by the supreme court, and, with the explanation here given, it is permitted to remain for the information of those desiring to know what its terms were.)

"No producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian; *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article or commodity under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such article or commodity before the beginning of said prosecution."

"*Provided*, That nothing in this act shall be construed to apply to *bona fide* boys' and girls' canning clubs recognized by the Agricultural Department of the several states and of the United States."

The act contains further provisions for carrying the same into effect, punishing violations, etc., and took effect from and after one year from the date of its passage.

LAWS OF 1917, CH. 227.

AN ACT relating to child labor in the state of Kansas, providing penalties for the violation hereof and repealing sections 6391, 6392, 6393, 6394 and 6395 of the General Statutes of Kansas for 1915.

§ 67. Child under fourteen not to be employed in factory, workshop, theatre, mill, cannery, packing house or operating elevator; not to be employed in any business during school hours. That no child under fourteen years of age shall be at any time employed, permitted, or suffered to work in or in connection with any factory, workshop, theatre, mill, cannery, packing house, or operating elevators; nor shall such child be employed, permitted or suffered to work in any business or service whatever during the hours in which the public school is in session in the district in which said child resides. [Laws 1917, ch. 227, § 1; May 26.]

§ 68. Child under sixteen not to be employed in mine or quarry, or any dangerous occupation. That no child under sixteen years of age shall be at any time employed, permitted, or suffered to work in or about any mine or quarry; or at any occupation at any place dangerous or injurious to life, limb, health or morals. [Laws 1917, ch. 227, § 2; May 26.]

AGE CERTIFICATES FOR CHILDREN OVER SIXTEEN YEARS OF AGE.

In view of the fact that the child-labor law prohibits the employment of children under sixteen years of age in certain occupations, and permits the employment of such children in certain other occupations only when work permits have been issued to such children, the commissioner of labor and industry has prepared and placed in the hands of the county superintendents of schools a form (Child Labor Form No. 8) for "Age Certificate of Child over Sixteen Years of Age." The commissioner's instructions on such form, in part, read:

"The law provides only for the issuing of work permits to children between fourteen and sixteen years of age. It would, therefore, be improper and contrary to the law to issue a work permit to a child that is sixteen years of age or over. It frequently occurs, however, that children over sixteen years of age applying for employment are unable to secure the same unless they can present to the employer some proof of their age. The child-labor law makes no requirement for work permits or age certificates of children who are sixteen years of age or over, but to avoid misrepresentation and for the protection of employers this form of age certificate is provided, and we strongly urge that all children whose physical development would indicate that there might be any possible doubt of their being at least sixteen years of age be required to file this age certificate with their employer.

"This certificate must not be issued to any child under sixteen years of age."

County superintendents of schools are instructed to furnish such certificates to children over sixteen years of age.

§ 69. Child under sixteen not to be employed before 7 a. m. or after 6 p. m.; number of hours employed in one day or one week. That no child under sixteen years of age, who is employed in the several vocations mentioned in this act, or in the transmission of merchandise or messages, or any hotel, restaurant or mercantile establishment, shall be employed before 7 a. m., or after 6 p. m., nor more than eight hours in any one calendar day, nor more than forty-eight hours in any one week. [Laws 1917, ch. 227, § 3; May 26.]

The act provides for the protection of employers by procuring and keeping on file a certificate, in such form as prescribed by the board designated for the carrying out of the provisions of the act, showing the child to be of such an age that the shipment, delivery for shipment, or transportation was not prohibited by the act. Concerning such certificate the act provides: "In any state designated by the board, an employment certificate or other similar paper as to the age of the child, issued under the laws of that state and not inconsistent with the provisions of this act, shall have the same force and effect as a certificate herein provided for."

The act is published in 39 United States Statutes at Large, page 675, and in 8 United States Compiled Statutes, Annotated, 1916, page 9602.

§ 70. Employers required to obtain and keep on file work permits for children under sixteen. That all persons, firms, or corporations employing children under sixteen years of age in any of the vocations mentioned in this act, shall be required to first obtain and keep on file and accessible to any inspector or officer charged with the enforcement of this act, the work permit as hereinafter provided for. [Laws 1917, ch. 227, § 4; May 26.]

§ 71. Employer of children under sixteen to post notice of hours of labor, hours allowed for meals, etc.; form of notice; noncompliance with notice deemed violation of act. That every employer shall keep posted in a conspicuous place near the principal entrance, in any establishment where children under sixteen years of age are employed, permitted or suffered to work, a notice stating the maximum number of hours such child may be required, or permitted to work, on each day of the week, the hours of commencing and stopping work and the hours allowed for dinner or other meals. The form for such notice shall be furnished by the commissioner of labor, and the employment of any child for a longer time in any day than so stated, or at any time other than as stated in said notice, shall be deemed a violation of the provisions of this act. [Laws 1917, ch. 227, § 5; May 26.]

§ 72. Superintendent of schools or authorized representative, or judge of juvenile court, to issue work permit only after conditions complied with; signed statement stating occupation; school record or examination required; evidence of age. That the superintendent of schools or his duly authorized representative, or the judge of the juvenile court, shall issue a work permit only after he has received, examined, approved, and filed the following papers duly executed, namely:

First. A written statement signed by the person for whom the child expects to work, or by some one duly authorized by such person, stating the occupation at which he intends to employ such child.

Second. The school record of such child properly filled out and signed by the principal of the school last attended, setting forth that such child has completed the course of study prescribed for elementary schools by the state board of education. In case such school record is not available then the official issuing the permit shall cause such child to be examined to determine whether or not such child has the educational qualifications equivalent to a completion of the elementary course of study prescribed by the state board of education, and shall file in the office a statement setting forth the result of such examination: *Provided*, That a permit may be issued to allow a child who has not completed the course of study provided for herein to work when school is not in session in the district in which such child resides, subject to all the other limitations of this act.

Third. Evidence of age of the child, showing that the child is fourteen years of age; and that the state commissioner of labor shall be, and hereby is authorized, empowered, and directed to make and prescribe, and from time to time to change and amend such rules and regulations, not in conflict with this act, as he may deem necessary and proper to secure satisfactory evidence of the age of the child applying for a work permit: *Provided, however*, That the evidence of age, and the manner of preparing and producing such evidence, required under such rules and regulations, shall comply substantially with the requirements as to proof of age prescribed by any rules and regulations made pursuant to the act of congress entitled, "An act to prevent interstate commerce in the products

of child labor, and for other purposes, approved September 1, 1916," and any amendments thereto hereafter made. [Laws 1917, ch. 227, § 6; May 26.]

RULES AND REGULATIONS GOVERNING PROOFS OF AGE OF CHILD.

(Prescribed by the commissioner of labor under authority of the preceding section of the child-labor law.)

The proof of age to be accepted and approved must show that the child is fourteen years of age or over and shall consist of the following-named proofs, duly attested, and the proof accepted shall be specified in the work permit issued to the child, and a statement thereof kept on file by the officer issuing such work permit; the proof specified in subdivision A shall be required first, but if it is not available then one of the proofs specified in the succeeding subdivisions shall be required and in the order designated until the age of the child be established.

In case any of the proofs of age enumerated in subdivisions B, C or D are presented the same must in all cases be verified and conform to the record of the age of the child, as shown by the school census record, if there be any such record, but the school census record of itself must not be accepted as proof of age, unless supported and confirmed by one of the proofs of age specified as follows:

(a) A birth certificate or transcript thereof issued by a registrar of vital statistics or other officer charged with the duty of recording births, which certificate or transcript thereof shall be *prima facie* evidence of the age of the child.

(b) A certificate of baptism or transcript thereof, showing the date of birth and place of baptism of the child.

(c) A *bona fide* record of the date and place of the child's birth kept in the Bible in which the records of the births, marriages, and deaths in the family of the child are preserved; or a certificate of confirmation or other church ceremony at least one year old showing the age of the child and date and place of such confirmation or ceremony; or a passport showing the age of the child; or a certificate of arrival in the United States, issued by the United States immigration officers and showing the age of the child; or a life insurance policy at least one year old showing the age of the child.

(d) A certificate signed by two physicians, at least one of whom shall be a public health officer or public school medical inspector, showing that they have separately examined the child and that in their opinion the child is at least fourteen years of age; such certificate shall show the height and weight of the child, the condition of its teeth, and any other facts concerning its physical development revealed by such examination and upon which their opinion as to its age is based.

§ 73. Work permits, matters to be stated therein; signed by child in presence of officer. That every work permit shall state the name, sex, the date and place of birth, and the place of residence, and describe the color of the hair and eyes, and the height and weight of such child, and shall contain a statement of the proof of age accepted and shall verify that the papers required by the preceding sections have been duly examined, approved, and filed, and that the child named in such permit has appeared before the official issuing the permit and has been examined. Every such permit shall be signed in the presence of the official issuing the same, by the child in whose name it is issued. It shall show the date of its issue. [Laws 1917, ch. 227, § 7; May 26.]

§ 74. Permits to be issued on blanks furnished; duplicate returned to commissioner of labor with statement; permit a protection to employer; exception. That the permits provided for under this act shall be issued upon blanks furnished by the commissioner of labor and shall be made out in duplicate; one of such duplicates shall be forthwith returned to the commissioner of labor, by the party issuing the same, with a statement of the character and substance of the evidence offered prior to the issuance of such permit. Such permit shall be sufficient protection to the employer of any child as to the age of such child, except when such employer has

actual knowledge of the falsity of such permit. [Laws 1917, ch. 227, § 8; May 26.]

§ 75. Employer to return permit to officer on termination of employment; transmission to commissioner of labor. That on the termination of the employment of a child whose work permit is on file, such permit shall be returned by the employer within two days to the official who issued the same; upon receipt of which the official shall transmit the same or a copy of the same to the state commissioner of labor. [Laws 1917, ch. 227, § 9; May 26.]

§ 76. Revocation of permit by commissioner of labor; notice to employer of child. That whenever it shall appear to the commissioner of labor that any permit has been improperly or illegally issued or that the physical or moral welfare of such child could be best served by the revocation of such permit, he may forthwith revoke the same, and shall then notify the person employing such child and the child holding such permit of such revocation. [Laws 1917, ch. 227, § 10; May 26.]

§ 77. Duty of factory inspector, inspector of mines and their deputies to inspect permits and examine children employed; complaints to enforce act; duty of county attorney. That it shall be the duty of the state factory inspector, state inspector of mines and their deputies, to inspect the permits and lists hereinabove provided for, to examine children employed in factories, workshops, theatres, elevators, packing houses and mines, and the vocations mentioned in sections 1 and 2 of this act, as to their age and education, and to file complaints in any court of competent jurisdiction to enforce the provisions of this act, and it shall be the duty of the county attorney of the proper county to appear and prosecute all complaints so filed. [Laws 1917, ch. 227, § 11; May 26.]

§ 78. Penalty for employing child in violation of act or permitting or conniving at such violation. That any person, firm or corporation employing any person or child in violation of any provision of this act, or permitting or conniving at such violation, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. [Laws 1917, ch. 227, § 12; May 26.]

§ 79. Sections repealed by this act; repeal of acts in conflict with this act. That sections 6391, 6392, 6393, 6394 and 6395, of the General Statutes of 1915, and all acts and parts of acts in conflict with the provisions of this act are repealed. [Laws 1917, ch. 227, § 13; May 26.]

LAWS OF 1903, CH. 219.

AN ACT to provide against public exhibitions of hypnotism, mesmerism, animal magnetism, or so-called psychical forces.

§ 80. Penalty for inducing or permitting child under eighteen years to assist in giving public exhibition of hypnotism, mesmerism, animal magnetism, etc. That any person or persons who shall within this state induce or permit any child under eighteen years of age to practice or assist or become a subject in giving public, open exhibitions, seances or shows of hypnotism, mesmerism, animal magnetism or so-called psychical forces shall be guilty of a misdemeanor, and on conviction be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than ten days nor more than three months, or by both such fine and imprisonment. [G. S. 1915, § 6402.]

LAWS OF 1889, CH. 104.

AN ACT for the protection of children.

§ 81. Disposing of child with view to its being employed as an acrobat, gymnast, contortionist, circus-rider, beggar, pauper, street singer, etc.; taking, receiving, employing, etc., child for such purposes; misdemeanor; punishment. . . . Any person having in his custody or control a child under the age of fourteen years, who shall in any way dispose of it with a view to its being employed as an acrobat, or a gymnast, or a contortionist, or a circus-rider, or a rope-walker, or in any exhibition of like dangerous character, or as a beggar or mendicant, or pauper, or street singer, or street musician; or any person who shall take, receive, hire, employ, use, exhibit, or have in custody any child of the age last named for any of the purposes last enumerated, shall be deemed guilty of a misdemeanor, and when convicted thereof shall be subject to punishment by a fine of not more than two hundred and fifty dollars, or by imprisonment for a term not exceeding one year, or both. [G. S 1915, § 6403.]

LAWS OF 1903, AS AMENDED BY LAWS OF 1907, CH. 317.

AN ACT to promote the attendance of pupils in schools, to prevent truancy, to provide for the appointment of truant officers, to define the rights and duties and compensation of such officers, to prescribe the penalties for violation of this act, and to repeal chapter 123 of the Session Laws of 1874, being paragraphs 6420, 6421, 6422 and 6423 of the General Statutes of Kansas, 1901.

§ 82. Parents, guardians, etc., required to send children between ages of eight and fifteen to public or private school; required attendance of child of fourteen years or older employed for support of himself, etc.; children having graduated from common schools exempt; children physically or mentally incapacitated; examination by physician. That every parent, guardian or other person in the state of Kansas having control or charge of any child or children between the ages of eight and fifteen years, inclusive, shall be required to send such child or children to a public school, or a private, denominational or parochial school taught by a competent instructor, each school year, for such period as said school is in session: *Provided*, That any child of the age of fourteen years or more who is able to read and write the English language, and who is actively and regularly employed for his own support or for the support of those dependent upon him, shall not be required to attend the aforesaid schools for a longer period or term than eight consecutive weeks in any one year: *Provided*, That any and all children that have received a certificate of graduation from the common schools of any county or certificate of admission to a high school in any city of the state of Kansas shall be exempt from the provisions of this act: *Provided*, That the children who are physically or mentally incapacitated for the work of common schools are exempt from the provisions of this act; but the school authorities shall have the right, and they are hereby authorized, when such exemption under the provision of this act is claimed by any parent, guardian, or other person in the control or charge of such child or children, to cause an examination of such child or children by a physician or physicians employed for such purpose by such authorities, and if such physician or physicians hold that such child or children are capable of doing the work in the common schools, then such child or children shall not be exempt from the provisions of this act. [G. S. 1915, § 9415.]

The act of 1917 concerning child labor (§§ 67-79, *supra*), being the later enactment, would control where its provisions are in conflict with the provisions of this act.

A child who attends a private, denominational or parochial school is not a truant. The State v. Will, 99 K. 167.

§ 83. Duty of truant officer when child absent from school; written notice to parent or guardian, etc.; service of notice; complaint if act not complied with in five days; jurisdiction of juvenile court, etc.; employment of children between ages of eight and fifteen years; school authorities may permit temporary absences in extreme cases of emergency or domestic necessity; penalty for violation of provisions of act; county attorneys and city attorneys to prosecute complaints. . . . Each truant officer, in his respective district, shall see that the provisions of this act are complied with, and when from personal knowledge, or by report, or complaint of any resident or teacher of the district under his supervision, or from any information, he believes that any child subject to the provisions of this act is habitually absent from any school which it should or has been accustomed to attend, or has been assigned to attend by order of the directors of any country district, or by the classification, transfer, or order of the board of education or superintendent of schools of any city of the first or second class, for a period of three or more consecutive days, unless excused under the provisions of section 1 of this act, he shall immediately give written notice to the parent, guardian or other person having control or charge of such child, or, in the absence of such parent, guardian or other person having control or charge from his or her usual place of residence, shall leave a copy of such notice with some person over twelve years of age residing at the said usual place of residence, with instructions to hand said notice to said parent, guardian or other person having control or charge of such child, which notice shall require the attendance of said child at said school within five days from date of same; and if within five days from the date of said notice such parent, guardian or other person having control or charge of such child does not comply with the provisions of this act, then such truant officer shall make complaint in the name of the state of Kansas against such parent, guardian or other person having control or charge of such child in the juvenile court or other court of competent jurisdiction of such county, which court is hereby clothed with jurisdiction over all offenders and proceedings under this act, with full power to try and hear all complaints, impose fines, enforce their collection by distress or imprisonment, and to fully execute the provisions of this act. It shall be unlawful for any merchant, company, or other party, without the written permit of the board of directors of any country district, or of the board of education of any city of the first or second class, to employ any child therein, between the ages of eight and fifteen years, during the sessions of the school term or year, unless such child is exempt from attendance under the provisions of section 1: *Provided*, That the board of directors of any country district or the board of education of any city of the first or second class shall have authority, in the exercise of a sound discretion, to permit temporary absences of children from school, between the ages of eight and fourteen years, in extreme cases of emergency or domestic necessity. Any parent, guardian or other person having control or charge of such child delinquent in school attendance, and any merchant, company, or other party unlawfully employing such child, upon conviction of the violation of any provision of this act, or of the act of which this is amendatory, shall be adjudged guilty of a misdemeanor, and shall be fined in a sum not less than five dollars nor more than twenty-five dollars for each offense, and be committed to the county jail till same is paid; all fines collected shall be paid into the county treasury for the support of the common schools. It shall be the duty of all county attorneys, for

country districts, in their respective counties, and of all city attorneys, in their respective cities, to prosecute all complaints filed and actions brought under this act or under the provisions of the act of which this is amendatory. [G. S. 1915, § 9416.]

"Section 1 of this act," mentioned herein, is § 82, *supra*.

The omitted portion of this section relates to the appointment of truant officers. Concerning child labor see note to § 82, *supra*.

LAWS OF 1917, CH. 184.

AN ACT to amend section 6357 of the General Statutes of Kansas of 1915, extending the period of minority in males and females to twenty-one years.

§ 84. **Period of minority in males and females.** The period of minority extends in males and females to the age of twenty-one years. [G. S. 1915, § 6357, as amended by Laws 1917, ch. 184, § 1; May 26.]

PART OF GENERAL STATUTES OF 1868, CH. 67.

§ 85. **Payment to minor for services performed under contract with such minor; full satisfaction.** When a contract for the personal service of a minor has been made with him alone, and those services are afterwards performed, payment made therefor to such minor in accordance with the terms of the contract is a full satisfaction for those services, and the parent or guardian cannot recover therefor. [G. S. 1915, § 6360.]

Payment to minor, for personal services, is full satisfaction. *Mining Co. v. Grant*, 68 K. 732.

CHAPTER 9.—CIVIL-SERVICE COMMISSION.

- § 86. Appointment of electors as civil-service commissioners; term of office; commissioners to constitute civil-service commission; persons to be appointed; quorum; vacancies; oath of office.
- 87. Civil service of the state divided into the unclassified service, the exempt service, and the classified service; unclassified service not subject to provisions of act; classes included in unclassified service.
- 88. Offices or positions which the commission may exempt from test and competition; office or position not exempt unless specifically named in rules; exemptions not to be made after six months without public hearing; appointments in exempt service may be made without test.
- 89. Civil-service commission to classify all other offices and places of employment; classified service; appointments to be made in accordance with this act; temporary appointments.
- 90. Purpose of act; commission to make rules to carry out such purpose; investigations by commission; witnesses; production of books, papers, etc.
- 91. Rules and changes therein to be printed for distribution; notice of places where rules may be obtained; when rules or changes take effect; certified copies of rules and changes to be deposited in office of secretary of state.
- § 92. Test of applicants for office or employment in classified service; nature of tests; questions not to relate to political or religious opinions or affiliations.
- 93. Commission may refuse to certify an applicant; grounds of refusal.
- 94. Commission to control all tests; members as examiners; report to commission; commission to verify rating or grading; officials having charge of public buildings to furnish room or offices for purpose of test or examination.
- 95. Notice of time, place and scope of tests and promotion tests; publication of notice; posting; applications for test; applicant may be required to pay fee; use of fund; deposit with state treasurer.
- 96. Commission to prepare register or eligible list for each grade or class of positions; rank of candidates on register to be in order of their rating.
- 97. Commission to provide for promotions in classified service; basis of promotion; appointment to be made from list of names submitted.
- 98. Appointing officer or board to notify commission of vacancy; commission to certify list of candidates; name of candidate may be stricken from register after being certified three times; emergency lists; appointments from emergency list.

- §99. Term of office of appointive state officers in classified service; investigation within thirty days before expiration of term; certificate to officer having appointive power; reappointment of officer.
100. Appointing officer or board to notify commission of each position to be filled; appointment of one of persons certified by commission; appointments on probation; discharge at expiration of period of probation; names remaining more than two years may be stricken; when examination or test to be held by commission; persons may retain rating or enter test for new rating.
101. Inmates of institutions may be assigned to minor duties without test or registration.
102. Officer or employee in classified service not to be removed, discharged, etc., because of religious or political opinion or affiliation; reasons for removal to be given in writing to commission and to person removed; answer of person removed; approval of removal; suspension of any attendant at state charitable institution; reinstatement after investigation; matters made part of record; investigations and hearings by commission.
103. Notice to be given in writing by appointing officer or board to the commission of appointments, transfers, promotions, resignations, vacancies, creation or abolition of offices, etc.; commission to keep roster of persons in classified service.
104. Commission to make annual report to the governor; special reports as required by the governor.
- §105. Officers of commission; chief examiner; duties; duties of secretary; files and records open to inspection.
106. Executive council to provide quarters for commission; expenditure for travel, printing, etc.; limit of amount.
107. Persons not to defeat, deceive, or obstruct person in respect to right of test, or falsely mark, grade, estimate, or report upon test, etc., or furnish or aid in furnishing special information.
108. Assessment, subscription, or contribution not to be solicited from any member of classified civil service for any party or political purpose; applicant not to pay or promise to pay money, etc., or ask for or receive recommendation, etc., as reward for political service, appointment, etc.
109. Forfeiture of office for violation of provisions of this act; justification of mere technical violation.
110. Commission may require noncompetitive test of all officers or employees in civil service less than six months preceding day on which rules take effect; test not required of persons in service more than six months.
111. Unlawful for officer, employee or appointee in classified service to contribute to any campaign fund, etc., or to take part in any political campaign.
112. Persons related by blood or marriage to any of officers or persons specified not to be appointed in classified service.
113. Repeal of acts in conflict with this act; act not to limit or repeal § 415 post.

LAWS OF 1915, CH. 156.

AN ACT creating a state civil-service commission, and providing for the appointment of civil-service commissioners and defining their duties, and fixing the tenure of office of certain officers in the classified service hereunder, and providing penalties for the violation of this act, and making an appropriation to carry out the provisions of this act.

§ 86. Appointment of electors as civil-service commissioners; term of office; commissioners to constitute civil-service commission; persons to be appointed; quorum; vacancies; oath of office. It shall be the duty of the governor, by and with the consent of the senate, on the taking effect of this act, to appoint three electors as civil-service commissioners, two of whom shall hold such office for the term of four years and one for the term of two years from the date of such appointment, and until their successors are appointed and qualified. The said commissioners shall constitute the civil-service commission. One of said commissioners shall be a member of the faculty of the state university, one shall be the state accountant and the third a state officer or member of a state board or commission. As the terms of said respective commissioners expire the governor, by and with the consent of the senate, shall appoint commissioners with the qualifications aforesaid to serve for a term of four years, and until their successors are appointed and qualified. Two commissioners shall constitute a quorum. Appointments to fill vacancies shall be made by the governor for unexpired terms. Each commissioner, before enter-

ing upon the duties of his office, will take the oath prescribed for executive officers. [G. S. 1915, § 10467.]

§ 87. Civil service of the state divided into the unclassified service, the exempt service, and the classified service; unclassified service not subject to provisions of act; classes included in unclassified service. The civil service of the state shall be divided into the unclassified service, the exempt service, and the classified service. The unclassified service shall not be subject to any of the provisions of this act, and shall include the following classes: All officers elected by popular vote; all commissioned officers appointed by the governor, with or without the consent of the senate; all officers and employees appointed by either or both branches of the legislature; all election officers; all heads of departments of the state government, and members of commissions, and boards thereof; all officers and persons in the militia; all officers and employees in the state printing department and in the printing department of any state institution; appointees of the courts and judges thereof, and the clerk or stenographer of any such judge or justice of the supreme court; the assistants and principal clerk and stenographers of the several constitutional executive state officers; all unskilled or common laborers or domestics employed and paid as common or unskilled laborers or domestics; the heads of the state educational institution, the instructors or professors therein, and the students who may be employed in any capacity. [G. S. 1915, § 10468.]

§ 88. Offices or positions which the commission may exempt from test and competition; office or position not exempt unless specifically named in rules; exemptions not to be made after six months without public hearing; appointments in exempt service may be made without test. The commission may, in its discretion, exempt from test and competition one secretary or clerk of each department, board, and commission, created under the laws of this state; one private secretary, clerk or stenographer of each principal executive officer; all officials of state institutions who are required to be physicians; employees of special commissions or committees of the legislature. There may also be included in the exempt classification or service all other offices or positions for the filling of which competitive or noncompetitive tests shall be found by the civil-service commission to be impracticable. No office or position shall be in the exempt service unless it is specifically named in the rules, and the reasons for making each such exemption shall be stated separately in the annual report of said commission. After this act has been in force for a period of six months no additional office or position shall be exempted or placed in the exempt service except after a public hearing by such commission conducted in such a manner as the commission may determine, and after suitable notice. Appointments in exempt service may be made without test. [G. S. 1915, § 10469.]

§ 89. Civil-service commission to classify all other offices and places of employment; classified service; appointments to be made in accordance with this act; temporary appointments. The civil-service commission shall, on or before July 1, 1915, and from time to time thereafter, classify all other offices and places of employment in the state service and the offices and places so classified by such commission shall constitute the classified service after July 1, 1915. No appointments in such classified service shall thereafter be made except in accordance with the provisions of this act. In cases of necessity and emergency temporary appointments

may be made, but no permanent place shall be filled by temporary appointment for more than seventy-five days in any year. [G. S. 1915, § 10470.]

§ 90. Purpose of act; commission to make rules to carry out such purpose; investigations by commission; witnesses; production of books, papers, etc. The purpose of this act is to provide means for selecting and promoting every official and employee in the classified service upon the sole basis of his proven ability to perform the duties of his office or employment more efficiently than any other candidate therefor, and the civil-service commission shall, make rules to carry out such purpose, and from time to time amend the same and investigate the enforcement and effect of such rules, and shall have the power to secure by subpœna the attendance and testimony of witnesses and the production of books and papers relevant to such investigation, or any investigation or inquiry made under the provisions of this act. [G. S. 1915, § 10471.]

§ 91. Rules and changes therein to be printed for distribution; notice of places where rules may be obtained; when rules or changes take effect; certified copies of rules and changes to be deposited in office of secretary of state. All rules made as herein provided and all changes therein shall forthwith be printed for distribution by said commission. Said commission shall give liberal public notice of the place or places where said rules may be obtained, and in each publication shall be specified the date, not less than ten days subsequent to the date of such publication, when said rules or changes therein shall take effect. The rules affecting any test shall not be changed after the publication of notice of such test. Copies of all rules and of all changes therein, duly certified by the secretary of the commission, shall be deposited in the office of the secretary of the state within ten days after the adoption thereof, and shall be filed, preserved, and indexed by such depositaries. [G. S. 1915, § 10472.]

§ 92. Test of applicants for office or employment in classified service; nature of tests; questions not to relate to political or religious opinions or affiliations. Every applicant for an office or employment in said classified service, except those exempted by or otherwise provided for by this act, shall be subject to a test, which shall be public and competitive, subject to limitations specified in the rules of the commission as to residence, age, sex, health, habits, and moral character. Such tests shall be practical in their character and shall relate to those matters which will fairly disclose the relative capacity of the persons tested to discharge the duties of the positions to which they seek to be appointed, and may include tests of mental qualification, of physical qualification and health, and, when appropriate, of manual or technical skill. No question in any test shall relate to political or religious opinions or affiliations. [G. S. 1915, § 10473.]

§ 93. Commission may refuse to certify an applicant; grounds of refusal. The commission may refuse to certify an applicant who is found to lack any preliminary requirement established by its rules for the test or position for which he applies, or who is found physically unfit to perform the duties attaching to such position, or who is addicted to the use of intoxicating beverages, or whose conduct is infamous or notoriously disgraceful, or who has within two years been dismissed from the public service for delinquency or misconduct, or who has intentionally made a false statement of any material fact, or practiced or

attempted to practice any deception or fraud in his application, or in his test, or in securing his eligibility to appointment. [G. S. 1915, § 10474.]

§ 94. Commission to control all tests; members as examiners; report to commission; commission to verify rating or grading; officials having charge of public buildings to furnish room or offices for purpose of test or examination. The commission shall control all tests and may, whenever a test is to be made, designate one or more of its number to be examiner, or may, itself as a board, conduct all such examinations. Such test or examination shall be made as the commission may direct, and when the same is conducted by one or more members of such commission as examiner or examiners they shall make returns or report thereof to said commission. Said commission shall verify the correctness of each rating or grading given any applicant under any such examination. Every official having charge of a public building or public office rooms shall assist the commission, whenever requested, by providing all reasonable accommodations for the purpose of any such test or examination and the use of such room or offices as may be necessary and proper therefor. [G. S. 1915, § 10475.]

§ 95. Notice of time, place and scope of tests and promotion tests; publication of notice; posting; applications for test; applicant may be required to pay fee; use of fund; deposit with state treasurer. Notice of the time, place and general scope of every test and promotion tests shall be given by the commission in the official state paper and in such others as may reasonably seem necessary by said commission, and such notice shall be posted by said commission in a conspicuous place in its office for three weeks before any such test. All applications for test shall be made in writing to the commission on a form prescribed by it not less than forty-eight hours before the test is to take place. Said commission may, by its rules, require every applicant for certification to any specified grade, except unskilled laborers and domestics, to pay the sum of one dollar to be placed to the credit of a special fund for defraying expenses incurred hereunder. The commission shall deposit all such fees in the state treasury at the end of each month. [G. S. 1915, § 10476.]

§ 96. Commission to prepare register or eligible list for each grade or class of positions; rank of candidates on register to be in order of their rating. The commission shall, from all such tests, or the returns or reports thereof prepare a register or eligible list for each grade or class of positions in the classified service, of the persons who attained such minimum mark as may be fixed by the rules of said commission, and who are otherwise eligible, and such persons shall take rank as candidates upon the register or list in the order of their rating as determined by test, without reference to priority of time of test. [G. S. 1915, § 10477.]

§ 97. Commission to provide for promotions in classified service; basis of promotion; appointment to be made from list of names submitted. The commission shall by its rules provide for promotions in such classified service on a basis of ascertained merit in service, seniority, and special test. Said commission shall submit to the appointing officer or board for each promotion the names of not more than three applicants having the highest rating on the above basis, one of whom shall be appointed by him. The method of testing and the rules governing the same, and the method of certifying shall, so far as possible, be the same as provided for applicants for original appointment. [G. S. 1915, § 10478.]

§ 98. Appointing officer or board to notify commission of vacancy; commission to certify list of candidates; name of candidate may be stricken from register after being certified three times; emergency lists; appointments from emergency list. The appointing officer or board under whom a position classified under this act is to be filled shall notify the commission of the vacancy, and the commission shall certify to him the names and addresses of a limited number of candidates, not to exceed three, as provided in its rules, who stand highest upon the register for the class or grade in which such position belongs, and the appointing officer or board shall select one of the persons so certified. After a candidate has been certified three times by the commission and has not been accepted, the name of such candidate may be stricken from the register. Emergency lists of persons who have passed the required tests may be maintained for any grade or class where the numbers employed vary so greatly at short intervals of time that certification after notice would be impracticable, and such list may stand as a call list for positions in that grade or class only. No appointment from an emergency list, except from the persons having the highest rating thereon and eligible to permanent appointment, shall stand for more than sixty days or be subject to renewal within fifteen days thereafter. [G. S. 1915, § 10479.]

§ 99. Term of office of appointive state officers in classified service; investigation within thirty days before expiration of term; certificate to officer having appointive power; reappointment of officer. The term of office of all appointive state officers in the classified civil service of this state, under the terms of this act, which is not declared or fixed by some other statute, is hereby declared to be four years. It shall be the duty of the civil-service commission within thirty days before the expiration of the term of any such officer to investigate the service record of such officer, and to consider and hear all complaints and protests, if any, concerning his efficiency, and fitness for such office, and if the said commission finds that such officer is performing the duties of his said office with that degree of efficiency which good public service requires, it shall so certify to the officer having the appointive power, and such officer shall thereupon be reappointed to such office. [G. S. 1915, § 10480.]

§ 100. Appointing officer or board to notify commission of each position to be filled; appointment of one of persons certified by commission; appointments on probation; discharge at expiration of period of probation; names remaining more than two years may be stricken; when examination or test to be held by commission; persons may retain rating or enter test for new rating. The appointing officer or board shall notify the commission of each position to be filled separately and shall fill such place by appointment of one of the persons certified to him by the commission therefor. Appointments shall be on probation for a period to be fixed by the rules of the commission. At the expiration of the period of probation the appointing officer may discharge a candidate at will, but if he is not then discharged the appointment shall be complete. The commission may strike from any eligible list the name of any candidate which has remained thereon more than two years. After one-third of an eligible list has been drawn the commission may hold another examination to obtain a new list. Whenever the list of persons tested and eligible for original appointment for any position in the classified service shall be less than five, the commission shall hold a test for such position, provided the position is such that more than three appointments are ordinarily

made to it, or to other positions in the same class, each year. Persons remaining on the eligible list may retain their rating, or, at their option, may enter the test and obtain a new rating which shall supersede their former rating. [G. S. 1915, § 10481.]

§ 101. Inmates of institutions may be assigned to minor duties without test or registration. Inmates of institutions where the employees are in the classified civil service may be assigned by the lawful authorities thereof, without test or registration, to such minor duties in their respective institutions as they are fitted to perform. [G. S. 1915, § 10482.]

§ 102. Officer or employee in classified civil service not to be removed, discharged, etc., because of religious or political opinion or affiliation; reasons for removal to be given in writing to commission and to person removed; answer of person removed; approval of removal; suspension of any attendant at state charitable institution; reinstatement after investigation; matters made part of record; investigations and hearings by commission. No officer or employee in the classified civil service shall be removed, discharged or reduced in rank or pay, because of religious or political opinion or affiliation. No removal from the classified civil service shall be made by any appointing officer or board except at the expiration of the period of probation, except for reasons given in writing to the commission and a copy of such reasons shall be given to the person removed. Such person may thereupon file with the commission, in writing, any proper answer to such reasons and shall not be removed unless the commission approves such removal: *Provided*, That the superintendent of any state charitable institution shall have power in case of emergency or urgent necessity to suspend any attendant and such suspension shall be effective at once and in force until such attendant is reinstated by order of said commission after due investigation. A copy of such reasons and answer and of the order of removal shall be made a part of the records of the commission and of the proper department or office, whenever, in the judgment of the said commission, it shall be to the best interests of such civil service, and the reasons for any change in rank or compensation within the classified service shall be made a part of the records of the commission and of the proper department or office. Said commission shall, in its discretion, have full power to investigate all grounds for removal and all charges preferred against officers or employees in such classified service, and may make such investigation or have such hearings as the circumstances of each case may seem to require. [G. S. 1915, § 10483.]

§ 103. Notice to be given in writing by appointing officer or board to the commission of appointments, transfers, promotions, resignations, vacancies, creation or abolition of offices, etc.; commission to keep roster of persons in classified service. Immediate notice in writing shall be given by the appointing officer or board to the commission, of all appointments, permanent or temporary, made in the classified civil service and of all transfers, promotions, resignations, or vacancies in such service and of the date thereof. When any office or place of employment is created or abolished, or the compensation attached thereto altered, otherwise than by statute, the officer or board making such change shall immediately report it in writing to the commission. The commission shall keep a roster of all persons in the classified civil service. [G. S. 1915, § 10484.]

§ 104. Commission to make annual report to the governor; special reports as required by the governor. The commission shall make an annual report to the governor. The governor may require a special report concerning any matter within the province of the commission at any other time. [G. S. 1915, § 10485.]

§ 105. Officers of commission; chief examiner; duties; duties of secretary; files and records open to inspection. The commission shall choose from its own members a president and secretary and may, from time to time whenever circumstances require it, appoint one of its members a chief examiner whose duty it shall be under the direction of the commission to superintend tests and conduct examinations provided for in this act, or by the rules of said commission. The secretary of said commission shall keep the minutes of all its proceedings, preserve all reports made to it, keep a record and index of all tests held under its direction and perform such other duties as the commission may from time to time prescribe. The files and records of the commission shall be open to inspection by the public at all reasonable hours as may be prescribed by such commission. [G. S. 1915, § 10486.]

§ 106. Executive council to provide quarters for commission; expenditure for travel, printing, etc.; limit of amount. The executive council shall provide suitable quarters for the commission in the state capitol, and the commission may incur necessary expenses for travel, clerk[,], hire, printing, stationery and other incidental expenses, not exceeding the sum of \$1,000 in any one year. . . . [G. S. 1915, § 10487.]

The omitted portion of this section provided an appropriation of \$1,000 for the year ending June 30, 1916, and \$1,000 for the year ending June 30, 1917.

§ 107. Persons not to defeat, deceive, or obstruct person in respect to right of test, or falsely mark, grade, estimate, or report upon test, etc., or furnish or aid in furnishing special information. No person shall by himself or in coöperation with one or more persons willfully or corruptly defeat, deceive, or obstruct any person in respect to his or her right of test under the provisions of this act, or falsely mark, grade, estimate, or report upon the test or standing of any person tested hereunder, or aid in so doing or furnish to any person except in answer to inquiries of the commission any special information for the purpose of either improving or injuring the rating of any person so tested, or to be tested, or the prospects of any such person for appointment, employment, or promotion. [G. S. 1915, § 10488.]

§ 108. Assessment, subscription, or contribution not to be solicited from any member of classified civil service for any party or political purpose; applicant not to pay or promise to pay money, etc., or ask for or receive recommendation, etc., as reward for political service, appointment, etc. No person shall solicit, orally or by letter, or be in any manner concerned in soliciting any assessment, subscription, or contribution from any member of the classified civil service for any party or political purpose or organization. No applicant for appointment or promotion in such classified civil service shall, either directly or indirectly, pay or promise to pay any money or other valuable thing to any person, or ask for or receive any recommendation or assistance from any officer or employee in said service or from any person, upon the consideration of any political service to be rendered to or for such person, or for the appointment or promotion of such person to any office or employment, or as a

reward for such political service, appointment, or promotion. [G. S. 1915, § 10489.]

§ 109. Forfeiture of office for violation of provisions of this act; justification of mere technical violation. Any person who shall willfully or through culpable negligence, violate any of the provisions of this act, or any rule promulgated in accordance with the provisions hereof, provided the commission may, by unanimous vote, justify a mere technical violation, shall forfeit such office or position. [G. S. 1915, § 10490.]

§ 110. Commission may require noncompetitive test of all officers or employees in civil service less than six months preceding day on which rules take effect; test not required of persons in service more than six months. The commission in its discretion may require of all officers or employees affected by the provisions of this act who have been in the civil service of the state less than six months preceding the day on which the rules shall take effect, a noncompetitive test as a condition of continuing therein more than six months after this act takes effect. Reasonable notice of this test shall be given to such officers and employees. No test shall be required of persons who have been in the civil service more than six months. [G. S. 1915, § 10491.]

§ 111. Unlawful for officer, employee or appointee in classified service to contribute to any campaign fund, etc., or to take part in any political campaign. It shall be unlawful for any officer, employee or appointee in the classified service to contribute in any way to any campaign fund in money, property or other thing of value, or to solicit, encourage or advise others so to do. It shall also be unlawful for any such person in said classified service to take part in any political campaign by speaking or lecturing or by any other act or conduct offensively partisan or tending in any way to impair the efficiency of the public service. [G. S. 1915, § 10492.]

§ 112. Persons related by blood or marriage to any of officers or persons specified not to be appointed in classified service. No person shall be appointed to any office, place or position in such classified service, who is related by blood or marriage to any member of such civil-service commission, or who is so related to any member of any board, or commission having or exercising supervision, or control, over any state educational, charitable or penal institution, in, or in connection with which, he is employed or appointed, or to the superintendent, or other chief officer, or officers, thereof, or to any of the heads of departments, or superintendents of department thereof. Nor shall any person be appointed to any office, place or position, in such classified service, in any of the executive or judicial branches of the state government, who is related by blood or marriage to the head, principal or chief of such department, or to the chief assistant or secretary thereof, in, or in connection with which he is employed or appointed. [G. S. 1915, § 10493.]

§ 113. Repeal of acts in conflict with this act; act not to limit or repeal § 415, *post*. All acts and parts of acts, in so far as they are in conflict with the provisions of this act, are hereby repealed. But this act shall in no way limit or repeal section 7879 of the General Statutes of 1909. [G. S. 1915, § 10494.]

"Section 7879 of the General Statutes of 1909," mentioned herein, relates to the employment of ex-soldiers and sailors and is printed as, § 415, *post*.

CHAPTER 10.—CIVIL SERVICE IN CITIES OF THE FIRST CLASS.

- § 114. Appointment of civil-service commissioners; qualifications; removal; vacancies; oath to be taken by commissioners; meetings and examinations; certification of applicants; removal of persons subject to civil-service examinations; appeal to commission; hearing; annual report to city commission; rules and regulations of city commission; ordinances; officers and employees to whom act shall apply; violation of provisions; misdemeanor; removal.
115. Foregoing section not to apply to certain cities.
116. Cities of 75,000 or more to appoint civil-service commissioners; term of office of such commissioners; not more than two members of same political party; commission appointed under § 114, *supra*.
117. Appointment of civil-service commissioners; commissioner not to be candidate for office; quorum; qualifications; removal; board to fill vacancy.
118. Board of commissioners to provide suitable rooms and supply equipment for civil-service commission.
119. Oath to be taken by civil-service commissioner.
120. Examinations to be held by civil-service commission; reappointment of officer on expiration of term; discharge of police officers.
121. Commissioner in charge of department to notify civil-service commission of vacancy to be filled from persons examined.
122. Civil-service commission to certify names, etc., from eligible list; appointments from such list; certification of police officers.
- § 123. Names of applicants not appointed within one year may be stricken; section not applicable to names of persons on list because term of office expired.
124. Sex disregarded in making certification; exceptions.
125. When commission may make temporary appointments; how long in force.
126. Removal of persons subject to civil-service examination; suspension; hearing before civil-service commission; attendance of witnesses, etc.; district court or judge to compel obedience to subpoena, etc.; commission revoke, modify or affirm order appealed from.
127. Reports of civil-service commission; rules and regulations for conduct of business; publication.
128. Officers and employees subject to examination and certification; term of office of employees and officers, etc.; reappointment when position abolished and recreated; officers in service of city prior to taking effect of act.
129. Control of examination, rules, etc.; what questions not to be asked.
130. Examinations, how conducted; examiners, qualifications, compensation, etc.
131. Salary of members of civil-service commission.
132. Officers, assistants and clerks subordinate to civil-service commission may be created.
133. When act to take effect; proviso relative to persons holding office or employment when act takes effect.

PART OF LAWS OF 1909, CH. 74.

§ 114. Appointment of civil-service commissioners; qualifications; removal; vacancies; oath to be taken by commissioners; meetings and examinations; certification of applicants; removal of persons subject to civil-service examinations; appeal to commission; hearing; annual report to city commission; rules and regulations of city commission; ordinances; officers and employees to whom act shall apply; violation of provisions; misdemeanor; removal. All cities that adopt the provisions of this act and the act of which this is amendatory, after January 1, 1909, shall, immediately after organizing the city commissioners, by ordinance, appoint three civil-service commissioners, who shall hold office, one until the first Monday in April in the second year after his appointment, one until the first Monday in April of the third year after his appointment, and one until the first Monday in April of the fourth year after his appointment. The board of commissioners shall, as soon as practicable after organizing upon the expiration of the term of office of any civil-service commissioner, appoint one civil-service commissioner for four years, who shall take the place of the commissioner whose term of office expires.

The chairman of the commission for each biennial period shall be the member whose term first expires. No person while on the said civil-service commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Kansas, and residents of the city for more than three years next preceding their appointment. The city commission may remove any of said civil-service commissioners during their term of office for cause, four commissioners voting in favor of such removal, and shall fill any vacancy that may occur in said commission for the unexpired term. The city commission shall provide suitable rooms in which the said civil-service commission may hold their meeting, such city to supply the said commission with all necessary equipment to properly attend to such business. (a) Before entering upon the duties of their office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and the state of Kansas, and to obey the laws, and to endeavor to secure and maintain an honest and efficient force, free from partisan influence or control, and to perform the duties of his office to the best of his ability. (b) Said commission shall be [meet] on the first Monday of April and October of each year, or oftener if it shall be deemed necessary, under such rules and regulations as may be prescribed by the commissioners, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Said commission shall, as soon as possible after such examination, certify to the city commission double the number of persons necessary to fill vacancies who, according to its records, have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service, prior to the date of the next regular examination, shall be filled from said list so certified: *Provided, however,* That should the list for any cause be reduced to less than three for any division, then the city commissioners or the head of the proper department may temporarily fill the vacancy, but not to exceed thirty days. (c) All persons subject to such civil-service examinations shall be subject to removal from office or employment by the city commission for misconduct or failure to perform their duties under such rules and regulations as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall within twenty-four hours thereafter report such suspension or discharge and the reason therefor to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension, according to the facts. Such employee (or officer discharging or suspending him) may, within five days of such ruling, appeal therefrom to the commission, which shall fully hear and determine the matter. (d) The commission shall have power to enforce the attendance of witnesses, the production of books and papers, and power to administer oaths in the same manner and with like effect and under the same penalties as in the case of notaries public. In case of disobedience on the part of any person or persons to comply with any subpoena, or to produce any books or papers in his custody, or on refusal of any witness to testify to any matter regarding which he may be lawfully interrogated before the com-

mission, it shall be the duty of the district court of the county or judge thereof, on application of a civil-service commissioner, to compel obedience by attachment proceeding for contempt as in case of disobedience of the requirements of a subpoena issued from such court or refusal to testify therein. Said civil-service commissioners shall make annual report to the city commission, and it may require a special report from said commission at any time, and the said city commission may prescribe such rules and regulations for the proper conduct of the business of said commissioners as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certification of records to the auditor, and restrictions on payment to persons improperly employed. (e) The commissioners of said city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this act relating to the civil-service commission. (f) The provisions of this section shall apply to all appointive officers and employees of said city, except city attorney, the members of the fire department where they have already adopted the civil-service plan, city clerk, city treasurer, city auditor, city engineer, superintendent of streets, superintendent of waterworks, secretary of waterworks, chief of police, city physician, judge of police court, superintendent of public parks, city assessor, commissioner of any kind (laborers whose occupation requires no special skill or fitness), election officials and mayor's secretary and assistant attorney, where such officers are appointed. All officers and employees in any such city shall be elected or appointed with reference to their qualifications and fitness and for the good of the public service, and without reference to their political faith or party affiliations. Any violation of the provisions of this section shall be a misdemeanor and be a ground for removal from office. [G. S. 1915, § 1557.]

This section relates to cities of the first class which have adopted the commission form of government.

Operation of this statute is not limited by "soldiers' preference law." *Goodrich v. O'Neill*, 85 K. 595.

Health department, field man under civil-service regulations. *Jagger v. Green*, 90 K. 153. Policeman not within provision of civil-service law. *Haney v. Cofran*, 94 K. 332.

LAWS OF 1911, CH. 95.

§ 115. Foregoing section not to apply to certain cities. The provisions of section 1238 of the General Statutes of 1909 shall not apply to the cities named in the title of this act. [G. S. 1915, § 1557a.]

"Section 1238 of the General Statutes of 1909," is § 114, *supra*.

The title to the act of which this section is a part is as follows: "An act relating to cities which shall hereafter become cities of the first class having a population of less than 30,000, which have heretofore adopted, or may hereafter adopt, the commission form of government. . . ."

LAWS OF 1913, CH. 88, AS AMENDED BY LAWS OF 1915, CH. 112, AND LAWS OF 1917, CH. 97.

AN ACT to regulate the civil service in cities now having or which may hereafter attain a population of 75,000 inhabitants and which have adopted or hereafter shall adopt the provisions of chapter 114 of the Laws of 1907, and acts amendatory thereof.

§ 116. Cities of 75,000 or more to appoint civil-service commissioners; term of office of such commissioners; not more than two members of same political party; commission appointed under § 114, *supra*. All cities now having or which may hereafter attain a population of 75,000 inhabitants or more and which has adopted or which may hereafter adopt

the provisions of chapter 114 of the Laws of 1909 and acts amendatory thereof, shall, immediately after the board of commissioners have organized, appoint by ordinance, three civil-service commissioners who shall hold office, one until the first Monday in April in the second year after his appointment, one until the first Monday in April in the third year after his appointment, one until the first Monday in April in the fourth year after his appointment: *Provided, however,* That no more than two members of said civil-service commissioners shall be members of the same political party: *Provided further,* That in all cities in which this act is applicable now having a civil-service commission appointed under provisions of section 1238 of the General Statutes of 1909, the said civil-service commissioners so appointed shall continue in office and exercise and perform the duties of said office in accordance with the provisions of this act. [G. S. 1915, § 1558.]

"Chapter 114 of the Laws of 1909," mentioned herein, is the act providing for the commission form of government in cities of the first class.

"Section 1238 of the General Statutes of 1909," mentioned herein, is § 114, *supra*.

§ 117. Appointment of civil-service commissioners; commissioner not to be candidate for office; quorum; qualifications; removal; board to fill vacancy. The board of commissioners shall, as soon as practicable after organizing, upon the expiration of the term of office of any civil-service commissioner appoint one member for four years who shall take the place of the one whose term of office expires. The chairman of the civil-service commission shall be the member whose term first expires. No person while a member of said civil-service commission shall be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be residents of Kansas, and residents of the city for at least three years next preceding their appointment. The board of commissioners may remove any member of the civil-service commission during his term of office for cause, four commissioners voting in favor of such removal, and shall fill any vacancy that may occur in said commission for the unexpired term. [G. S. 1915, § 1559.]

§ 118. Board of commissioners to provide suitable rooms and supply equipment for civil-service commission. The board of commissioners shall provide suitable rooms in which said civil-service commission may hold their meetings, and shall supply the said commission with all the necessary equipment to properly attend to such business. [G. S. 1915, § 1560.]

§ 119. Oath to be taken by civil-service commissioner. Before entering upon the duties of their office each of said commissioners shall take and subscribe an oath which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and the state of Kansas, and to obey the laws and to endeavor to secure and maintain an honest and efficient force, free from partisan influence or control, and to perform the duties of his office to the best of his ability. [G. S. 1915, § 1561.]

§ 120. Examinations to be held by civil-service commission; reappointment of officer on expiration of term; discharge of police officers. The civil-service commission shall, whenever it is necessary so to do, under such rules and regulations as it may prescribe, hold examinations for the purpose of determining the qualification and fitness of applicants for all positions with the city subject to examination as hereinafter

defined, which examination shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed: *Provided, however*, That any police officer whose term of office shall expire after the taking effect of this act, shall be eligible for reappointment without any further examination; and in the event his record for efficiency as an officer is good, it shall be the duty of the civil-service commission to place the name of such officer upon the list of those eligible for such appointment and he shall be given preference in the appointment to said office: *Provided further*, That when the eligible list shall contain the name of more than one such officer, the one having the longest continuous time of service shall be given the preference in appointment; and in the event of discharge or suspension for the purpose of retrenchment of expenses, police officers shall be so discharged or suspended, commencing with the officer having the shortest continuous time of service. [G. S. 1915, § 1562, as amended by Laws 1917, ch. 97, § 1; March 1.]

Position of health commissioner is subject to civil-service law. *McLaughlin v. Green*, 96 K. 644.

§ 121. Commissioner in charge of department to notify civil-service commission of vacancy to be filled from persons examined. The commissioner in charge of any department shall immediately notify the civil-service commission whenever a vacancy exists in his department when the vacant position is one that may be filled by appointment only from the applicants examined by the civil-service commission or from those placed upon the eligible list as hereinbefore provided. [G. S. 1915, § 1563, as amended by Laws of 1917, ch. 97, § 2; March 1.]

§ 122. Civil-service commission to certify names, etc., from eligible list; appointments from such list; certification of police officers. The civil-service commission shall certify to the board of commissioners the names and addresses of double the number of applicants for each vacancy, standing highest upon the eligible list of the class or grade to which said position belongs, and the board of commissioners shall make appointments from such list so certified and not otherwise: *Provided, however*, That whenever the eligible list of the civil-service commission contains less than double the number of applicants to fill the vacancy or vacancies existing, the board of commissioners shall appoint the person or persons then available on said eligible list: *Provided further*, That in case of a vacancy or vacancies existing in the office of police officers, the civil-service board shall first certify to the board of commissioners the names of those transferred to the eligible list by reason of their term of office expiring, as hereinbefore provided, and the board of commissioners shall make appointments from such list so certified and not otherwise and those whose term of office expired first shall be first appointed: *Provided further*, That the name of no person shall be placed upon the eligible list for any position upon the police force, other than that of the patrolman, chauffeur or guard, who has not had two or more years of actual service as a police officer. [G. S. 1915, § 1564, as amended by Laws of 1917, ch. 97, § 3; March 1.]

Appointment from certified list valid, although mistake made in list. *McLaughlin v. Green*, 96 K. 641.

§ 123. Names of applicants not appointed within one year may be stricken; section not applicable to names of persons on list because term of office expired. The civil-service commission may strike from the eli-

gible list the names of all applicants after they have remained thereon for more than one year and have failed to be appointed: *Provided, however*, That this section shall not apply to those whose names have been placed upon such eligible list by reason of their term of office expiring as hereinbefore provided. [G. S. 1915, § 1565, as amended by Laws of 1917, ch. 97, § 4; March 1.]

§ 124. Sex disregarded in making certification; exceptions. In making the certification herein required sex shall be disregarded except when some statute or the order of the board of commissioners specify sex. [G. S. 1915, § 1566.]

§ 125. When commission may make temporary appointments; how long in force. To prevent the stoppage of public business or to meet extraordinary exigencies the board of commissioners may make temporary appointments to remain in force not exceeding sixty days whenever there are no names upon the register to fill vacancies. [G. S. 1915, § 1567.]

§ 126. Removal of persons subject to civil-service examination; suspension; hearing before civil-service commission; attendance of witnesses, etc.; district court or judge to compel obedience to subpoena, etc.; commission revoke, modify or affirm order appealed from. All persons subject to civil-service examination may be removed from office or employment only upon charges preferred in writing for misconduct or failure to perform their duties: *Provided, however*, That pending the hearing of such charges the principal officer of any department or the city commissioner in charge of such department may suspend any such officer or employee of the city. All such charges shall be heard by the civil-service commission after a copy of the charges have been transmitted to the person against whom filed and due opportunity has been given him to defend. The civil-service commissioners shall have power to enforce the attendance of witnesses, the production of books and papers, and power to administer oaths in the same manner and with like effect and under the same penalties as in the case of notaries public. In case of disobedience on the part of any person or persons to comply with any subpoena, or to produce any books or papers in his custody, or on refusal of any witness to testify to any matter regarding which he may be lawfully interrogated before the commission, it shall be the duty of the district court of the county or judge thereof, on application of a civil-service commissioner, to compel obedience by attachment proceedings for contempt as in case of disobedience of the requirements of a subpoena issued from such court or refusal to testify therein. The civil-service commission shall, after hearing the evidence, either revoke, affirm or modify the order appealed from, and their action thereon shall be final. [G. S. 1915, § 1568.]

Officers removable only on charges preferred, etc. *Jagger v. Green*, 90 K. 159.

§ 127. Reports of civil-service commission; rules and regulations for conduct of business; publication. The civil-service commission shall make an annual report to the board of commissioners and the board of commissioners may require special reports from the civil-service commission at any time. The civil-service commission may prescribe such rules and regulations for the proper conduct of the business of said commission as shall be found expedient and advisable. Such rules and regulations shall

be published after their adoption and before going into effect once in the official city paper. [G. S. 1915, § 1569.]

§ 128. Officers and employees subject to examination and certification; term of office of employees and officers, etc.; reappointment when position abolished and recreated; officers in service of city prior to taking effect of act. All officers and employees of the city shall be subject to examination and certification in the manner herein required, except the following officers: City attorney, city clerk, city treasurer, city auditor, chief of police, judge of police court, mayor's secretary, assistant city attorney, chief of the fire department, city physician, city engineer, superintendent of streets, superintendent of public parks, purchasing agent and license inspector, superintendent of waterworks, superintendent of lights, and laborers whose occupation requires no special skill or fitness. All employees of the city subject to the examination herein required, shall be appointed for a term to continue until removed for cause or until the position to which he is appointed is abolished: *Provided, however,* That in the event that any position is abolished and recreated within a period of one year thereafter, the person filling such position at the time the position is abolished shall be reappointed to such position without an additional examination: *Provided further,* That the term of office for all officers subject to the examination herein required shall be for four years, and until his successor is appointed and qualified: *Provided further,* That every officer or employee subject to the provisions of this act, and who has been in the service of said city, as an officer or employee, for a period of one year immediately prior to the taking effect of this act, and who has heretofore passed the civil-service examination, shall be exempt from further examination and his tenure of office shall begin from the taking effect of this act. [G. S. 1915, § 1570.]

Those appointing officers mentioned cannot remove such officers at pleasure. *McLaughlin v. Green*, 96 K. 641.

§ 129. Control of examinations, rules, etc.; what questions not to be asked. The civil-service commission shall control all examinations and provide uniform rules with respect thereto; no question in any examination shall relate to political or religious faith or party affiliations. [G. S. 1915, § 1571.]

§ 130. Examinations, how conducted; examiners, qualifications, compensation, etc. The civil-service commission may designate a suitable person or persons to conduct any examination: *Provided,* That if the person so selected is in the service of the city he shall be entitled to no additional compensation therefor. The compensation to be paid outside examiners shall be such as is fixed by the board of commissioners. The civil-service commission may themselves at any time conduct any examination without appointing examiners. The examiners at any examination shall not all be members of the same political party. [G. S. 1915, § 1572.]

§ 131. Salary of members of civil-service commission. The board of commissioners may, by ordinance, provide for the payment of a salary to any one or more of said civil-service commissioners. Said salary not to exceed \$5.00 per meeting nor to aggregate more than \$500.00 per year for each member. [G. S. 1915, § 1573.]

§ 132. Officers, assistants and clerks subordinate to civil-service commission may be created. The board of commissioners shall have the

power to create such officers, assistants, and clerks, subordinate to the civil-service commission as they may deem necessary for the purpose of conducting the business of said commission. [G. S. 1915, § 1574.]

§ 133. When act to take effect; proviso relative to persons holding office or employment when act takes effect. This act shall be in full force and effect from and after June 1, 1913: *Provided, however,* That any person holding any office or employment in any city in which this act becomes operative which office or employment is subject to the provisions of this act, and who has heretofore taken the examination, and whose name has been certified to the city commission by the civil-service commission, except regular firemen who have been in continuous service for at least four years preceding, shall be entitled to hold said office or employment without examination and for the tenure herein fixed to the same extent as though his appointment was made after due examination and in regular course. [G. S. 1915, § 1575.]

CHAPTER 11.—CONSTRUCTION, ETC., OF BUILDINGS, ETC.

§134. Insufficient staging, scaffolding, stays, etc., used in construction, repairing or painting of any building, tower, tank, etc.; defective elevator, derrick, or hoist; complaint to state factory inspector; duty of inspector or deputy; no-

tice to contractor, etc.; duty of contractor, etc., to make necessary repairs, etc.

§135. Penalty for failure to comply with preceding section and demands of state factory inspector, assistant, or deputy.

LAWS OF 1905, CH. 527.

AN ACT for the protection of workmen, laborers, mechanics and other persons employed in the construction, repairing or painting of any building, tower, tank, or other structures, and providing penalties for the violation thereof.

§ 134. Insufficient staging, scaffolding, stays, etc., used in construction, repairing or painting of any building, tower, tank, etc.; defective elevator, derrick, or hoist; complaint to state factory inspector; duty of inspector or deputy; notice to contractor, etc.; duty of contractor, etc., to make necessary repairs, etc. That whenever it shall come to the notice of any workman, laborer or mechanic employed in the construction, repairing or painting of any building, tower, tank, or other structure, or of any other person or persons, that the staging, scaffolding, stays or other appliances used for the purpose of supporting said workmen, laborers, or mechanics, their tools, and all necessary material, while at work on such building, tower, tank, or other structure, are not of sufficient strength to safely carry the weight of such workmen, laborers, or mechanics, their tools, and all necessary material, while working thereon, or if any elevator, derrick or hoist used for the purpose of raising or lowering workmen or material to be used in the aforesaid construction, repairing or painting are not of sufficient strength to do the work required of them, or are not surrounded by the proper safeguards, said workmen, laborers, mechanics or other person or persons may make complaint to the state factory inspector, who shall forthwith inspect, or cause to be inspected by his assistant or deputy, such insufficient staging, scaffolding, stays, elevators, derricks, hoists or other appliances used in the said construction, repairing, or painting, and if found upon inspection to be insufficient and unsafe, or not properly surrounded by

safeguards, it shall be the duty of the said state factory inspector, his assistant or deputy, to then and there notify the contractor, owner, superintendent or person in charge of the construction, repairing or painting of said building, tower, tank or other structure, of the conditions of such staging, scaffolding, stays, elevators, derricks, hoists or other appliances used as aforesaid. It shall then become incumbent upon the said contractor, owner, superintendent or person having in charge the said construction, repairing, or painting, having been so notified, to immediately reconstruct, repair, strengthen, or cause to be reconstructed, repaired, or strengthened, such defective staging, scaffolding, stays, elevators, derricks, hoists, or other appliances, and put in place and maintained, or cause to be put in place and maintained, such railing or other safeguards as may be deemed necessary by the said inspector, his assistant or deputy, to bring them safely within the provisions of this act. [G. S. 1915, § 5894.]

§ 135. Penalty for failure to comply with preceding section and demands of state factory inspector, assistant, or deputy. Any contractor, owner, superintendent or person in charge of the construction, repairing or painting of any building, tower, tank or other structure, who, after having received notice from the state factory inspector, his assistant or deputy, shall fail or refuse to comply with the provisions of this act and the demands of the said inspector, his assistant or deputy, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined not less than ten dollars nor more than one hundred dollars for such offense, and an additional fine of five dollars for each day the said work is continued after such notice until the provisions of this act have been fully complied with. [G. S. 1915, § 5895.]

CHAPTER 12.—CONVICT LABOR.*

Article 1. Labor Performed Within Penitentiary Grounds. §§ 136-153.

2. Labor Performed Outside Penitentiary Grounds. §§ 154-160.

ARTICLE 1.—Labor Performed Within Penitentiary Grounds.

§136. Convicts permitted to participate in earnings; amount; when convict not to receive any sum; forfeiture for violation of rules.

137. Amounts earned to be computed monthly and placed to credit of convict; payment of amount due at expiration of sentence; earnings may be sent to family of convict; expenditure of earnings; deposit of moneys by warden; warden not to mingle funds.

138. Letting of contract for prison labor; president of board to advertise for proposals for bids.

139. Period of contract; minimum price per diem for each convict; bid not entertained unless accompanied by bond.

§140. Board of directors to open and consider bids and award contracts; settlement of questions arising under contracts.

141. Settlement of questions arising between meetings of directors; determination by warden; submission to directors.

142. Execution of contracts; suits in name of board of directors.

143. State to retain right to control and govern prisoners; work injurious to prisoners to be forbidden; prisoners to be taught trade; no contracts for employment outside prison grounds; ten-hour day; bond to secure performance of contract, amount and approval.

* The "board of directors" mentioned in this chapter has been superseded by the state board of administration, which board succeeded to all the powers heretofore vested in the board of directors. (See Laws of 1917, ch. 297.)

- §144. Warden authorized to mine coal on lands belonging to state; employment of convicts; board may lease or purchase adjoining land; condemnation of land by board; notice; appraisement; filing of report; auditor to draw warrant for payment of amount awarded; report to state whether fee or right of user only is taken; appeal by landowner; use of land pending appeal.
145. Coal for state institutions to be supplied after supplying penitentiary; sale for cash to supply local wagon trade at mines; price.
146. Coal mine owned by state not to be leased; employment of convict labor in working and developing mine; use of convict labor on wagon road from penitentiary to limits of city of Leavenworth.
147. Laws repealed by Laws of 1891, ch. 152.
148. Coal not to be sold on market, by contract or otherwise.

- §149. Output of penitentiary mine limited to needs of public buildings and state institutions.
150. Repeal of Laws of 1897, ch. 163, and acts in conflict herewith.
151. Payment of wages to convicts in state penitentiary and state reformatory; amount of such wages; amount placed in separate fund to be forwarded to persons dependent on such convict for support; proof of dependency; accumulation of fund if there be no persons dependent on convict; use of fund for supplying citizen's clothes, etc.; purchase of small necessities for convict.
152. Repeal of acts in conflict with preceding section.
153. Warden or other official to pay to wife or guardian, etc., of minor child of convict sentenced for desertion or nonsupport of wife or children the amount allowed for labor performed.

LAWS OF 1891, CH. 152, AS AMENDED BY LAWS OF 1901, CH. 272.

§ 136. Convicts permitted to participate in earnings; amount; when convict not to receive any sum; forfeiture for violation of rules. The convicts in the state penitentiary shall be permitted to participate in their earnings as follows, viz.: Each convict shall have allowed to him out of his earnings five per cent upon each day's labor, the value of each day's labor being computed at seventy-five cents: *Provided*, That any time said convict shall, from sickness or other means, be unable to perform his daily labor, or while he shall be under punishment for any violation of the rules of the penitentiary, shall not be estimated; nor shall such convict receive any sum while disabled from sickness or other cause, nor while undergoing punishment for the violation of any prison rules or orders: *And provided further*, That for the violation of such rules or orders the warden and directors may declare the whole or any part of the convict's earnings forfeited. [G. S. 1915, § 10000.]

§ 137. Amounts earned to be computed monthly and placed to credit of convict; payment of amount due at expiration of sentence; earnings may be sent to family of convict; expenditure of earnings; deposit of moneys by warden; warden not to mingle funds. The warden shall, at the end of each month, compute and place to the credit of each convict the amount earned by him as aforesaid; and at the expiration of his sentence, the balance due him on account of his earnings, upon the basis aforesaid, shall be paid to him: *Provided, however*, That if the convict shall by good conduct be entitled to his earnings as herein provided, he may, if he elect, cause his earnings in excess of the earnings of one year to be sent to his family, or to be expended in such manner as the warden may approve. It shall be the duty of the warden to deposit in a bank, to be designated by the board of directors, all moneys coming into his hands belonging to the penitentiary or convicts, and not invested as hereinbefore provided. Such account at the bank so designated shall be kept with the warden officially, and he shall not mingle the funds of the penitentiary with his private funds, nor check against such account, except for the authorized purposes of said institution. [G. S. 1915, § 10001.]

§ 138. Letting of contract for prison labor; president of board to advertise for proposals for bids. Before letting any contract for prison labor, the president of the board of directors shall advertise for proposals for bids in at least three papers of general circulation in the state, for at least sixty days preceding the opening of the bids and awarding the contract. [G. S. 1915, § 10002.]

§ 139. Period of contract; minimum price per diem for each convict; bid not entertained unless accompanied by bond. Contracts shall be made for a term not exceeding six years, and shall be awarded to the highest responsible bidder, but not at a less price than forty-five cents per diem for each able-bodied convict. No bid shall be entertained unless it is accompanied with a bond of five thousand dollars, which bond shall be conditioned for a faithful compliance with the terms of the bid made if accepted. [G. S. 1915, § 10003.]

§ 140. Board of directors to open and consider bids and award contracts; settlement of questions arising under contracts. The board of directors of the state penitentiary shall open and consider bids and award contracts, and are empowered to act in all matters appertaining thereto, and for the settlement of any question that may at any time arise under such contract for and in behalf of the state penitentiary. [G. S. 1915, § 10004.]

§ 141. Settlement of questions arising between meetings of directors; determination by warden; submission to directors. If any question arises in relation to and under any contract made for the employment of prison labor during the period between the meeting of the board of directors, it shall be determined by the warden, and be repeated by him to the board at the next regular meeting of the directors for their concurrence, rejection, or settlement. [G. S. 1915, § 10005.]

§ 142. Execution of contracts; suits in name of board of directors. All contracts made for the employment of prison labor shall be signed by the president of the board of directors, and shall be between the board of directors and the person, firm or company contracting; and any suit brought under, for or on account of any claims arising out of said contracts shall be brought by and in the name of the board of directors of the state penitentiary. [G. S. 1915, § 10006.]

§ 143. State to retain right to control and govern prisoners; work injurious to prisoners to be forbidden; prisoners to be taught trade; no contracts for employment outside prison grounds; ten-hour day; bond to secure performance of contract, amount and approval. In contracting the labor of the prisoners, the state shall retain the right of full control through the proper officers over them, and shall reserve the right to govern the prisoners, and to change the disciplinary rules of the prison, and to forbid any work or mode or manner of doing the same that is injurious to the health, or dangerous to the person of the prisoners; and the party hiring the labor shall be required, so far as practicable, to teach the prisoner as much of the trade at which he is employed as will enable him to work at the same when discharged from prison. No contract shall be made for the employment of the prisoners outside of the prison grounds. A day's labor shall be ten hours. The bond to secure performance of contract in each case shall be executed to the state of Kansas in such a sum as may be determined by the board; but in no case to be a

less sum than ten thousand dollars nor more than fifty thousand dollars, and to be approved by the board of directors. [G. S. 1915, § 10007.]

§ 144. Warden authorized to mine coal on lands belonging to state; employment of convicts; board may lease or purchase adjoining land; condemnation of land by board; notice; appraisement; filing of report; auditor to draw warrant for payment of amount awarded; report to state whether fee or right of user only is taken; appeal by land-owner; use of land pending appeal. The warden is authorized to mine and take out the coal on the lands belonging to the state upon which the penitentiary is located and adjacent thereto, so far as that can be done without injury to the penitentiary buildings located thereon, and to employ the labor of such convicts as are not required in other departments of the penitentiary or to supply existing contracts in so doing. The board of directors may also lease land adjoining that owned by the state for the purpose of mining and taking out the coal thereon, providing that it can be done at a price not exceeding two mills per bushel, or may purchase and acquire the fee to such land for the state at such reasonable price per acre as shall be agreed upon by the owner and the board of directors and approved by the governor; and in case such right of user or the fee to such land cannot be secured by contract or purchase, the board of directors of the state penitentiary shall have power to lay off, appropriate and condemn for the state the fee or the right of user to such land in the following manner: The board of directors shall appraise the value of the land so to be condemned, and of each owner's interest therein, and assess the damages, if any, to the residue of the tract, all of which shall be embodied in a written report, and forthwith filed in the office of the county clerk of the county in which such land is situated, and shall be recorded in the office of the register of deeds of such county; and upon a statement showing the amount awarded to each land-owner under the provisions of this section, or the purchase-price of such land agreed upon and approved as hereinabove provided, signed by the president of the board of directors, the auditor of state shall draw his warrant for the amount awarded or such purchase-price, payable to the president of the board of directors, out of any funds appropriated for that purpose: *Provided*, That before proceeding to condemn and appraise such lands as aforesaid, the board of directors shall give notice of the time when and the place where it will commence such proceedings; and the said board shall deposit the money awarded, and in all respects conform in its proceedings under this section as near as may be to the provisions of the law for the appropriation of land for the use of railway corporations. The land-owner shall have the right of appeal, the same as in cases of condemnation by railway corporations; and if upon the trial of such appeal, or in compromise thereof by the board of directors, the award of damages shall be increased, the auditor of state shall, upon a statement thereof as herein above provided, draw a warrant therefor, payable to the president of the board of directors, and the amount thereof shall be paid to the land-owner entitled thereto or to the legal representatives of such land-owner: *Provided*, That where the purchase-price of any such land is to be paid to the president of the board of directors upon the warrant of the state auditor, as herein above provided, the money so paid shall be forthwith delivered to the person or persons entitled to such purchase-money or to his or their legal representatives. The report of proceedings under this section shall, in addition

to other matters, show whether the fee to the land, or the right of user only, is taken; and upon the filing of such report, and depositing the amount awarded as herein provided, said board of directors may, notwithstanding the pendency of any appeal, take possession of and use the land so condemned, the same as if no appeal had been taken; and upon the payment of the amount awarded by said board, or on appeal, if any is taken, the fee simple to the land appropriated, or the right to use the same as specified in the report aforesaid, shall be vested in the state forever. [G. S. 1915, § 10008.]

§ 145. Coal for state institutions to be supplied after supplying penitentiary; sale for cash to supply local wagon trade at mines; price. The warden, after supplying the penitentiary with all necessary coal from said mines, shall supply on cars at the mines all the coal necessary for fuel for the state house, the insane asylums and other state institutions which are now supplied by the state, and thereafter he may sell for cash such portion of the surplus coal as may be required to supply the local wagon trade at said mines, at a price not less than one cent per bushel higher than the surplus is contracted to be sold as hereinafter provided. [G. S. 1915, § 10009.]

See § 148, prohibiting sale of coal on the market.

§ 146. Coal mine owned by state not to be leased; employment of convict labor in working and developing mine; use of convict labor on wagon road from penitentiary to limits of city of Leavenworth. The coal mine owned by the state at the penitentiary shall not be leased, but the warden and directors shall employ the surplus convict labor in working and developing the same to the greatest practical advantage: *Provided*, That the warden may use such portion of the convict labor as may be necessary to keep in repair the wagon road from the state penitentiary to the limits of the city of Leavenworth. [G. S. 1915, § 10010.]

§ 147. Laws repealed by Laws of 1891, ch. 152. All of sections numbered from 6394 to 6456 inclusive, of the General Statutes of 1889, the same being article 30 of chapter 99 thereof, and comprising all of chapter 77 of the Laws of 1868, chapter 101 of the Laws of 1869, chapters 22, 26 and 111 of the Laws of 1871, chapters 26 and 103 of the Laws of 1873, chapter 51 of the Laws of 1874, chapter 100 of the Laws of 1876, chapter 87 of the laws of 1879, chapter 8 of the Laws of 1883, chapter 41 of the Laws of 1887, and chapter 44 of the Laws of 1889, are hereby repealed. [G. S. 1915, § 10011.]

LAWS OF 1899, CH. 171.

§ 148. Coal not to be sold on market, by contract or otherwise. That no coal mined at the penitentiary shall hereafter be sold on the market, by contract or otherwise. [G. S. 1915, § 10012.]

§ 149. Output of penitentiary mine limited to needs of public buildings and state institutions. That the output of coal at the penitentiary mine shall be limited to the needs of the public buildings and institutions of the state. [G. S. 1915, § 10013.]

§ 150. Repeal of Laws of 1897, ch. 163, and acts in conflict herewith. That chapter 163 of the Session Laws of 1897, and all other acts and parts of acts in conflict with this act, be and the same are hereby repealed. [G. S. 1915, § 10014.]

LAWS OF 1913, CH. 304.

AN ACT providing for the payment of a daily wage to prisoners in the state penitentiary and state reformatory and creating a fund for the dependent members of the immediate families of such prisoners and repealing all acts and parts of acts in conflict herewith.

§ 151. Payment of wages to convicts in state penitentiary and state reformatory; amount of such wages; amount placed in separate fund to be forwarded to persons dependent on such convict for support; proof of dependency; accumulation of fund if there be no persons dependent on convict; use of fund for supplying citizen's clothes, etc.; purchase of small necessities for convict. That the board of directors of the state penitentiary located at Lansing, Kansas, and of the state reformatory located at Hutchinson, Kansas, be directed to pay, out of any general funds belonging to the respective institutions, to each convict employed by the state a sum of money, and such wage shall be not less than ten cents per day and may be raised from time to time above ten cents where in the judgment of the superintendent or board of directors, the work is of such quality and value as to warrant a greater amount, but in no case is the amount so paid to exceed twenty-five cents per day for each day's work performed by the convict above the regular daily task assigned by the warden of the penitentiary or superintendent of the state reformatory while in the penitentiary or reformatory; and that the amount of money thus earned by the convict shall be placed in a separate fund to his credit to be forwarded by the board of directors at the close of each month to any person or persons of his immediate family who are dependent upon such convict wholly or in part for their support, such dependence being shown by a written statement signed by the county commissioners and probate judge of the county in which such dependent person or persons live: *Provided*, That if there be no such person or persons dependent upon the convict for such support, then said fund shall accumulate to the individual credit of such convict until the close of his term when the board of directors or superintendent shall use a portion thereof to supply such convict with suitable citizen's clothes, and the remainder be given him to assist him in again starting out in life: *Provided further*, That the board of directors or superintendent may use a portion of such fund as may accumulate to a convict who has no one dependent upon him, for the purchase from time to time of small necessities for such convict. [G. S. 1915, § 10022.]

§ 152. Repeal of acts in conflict with preceding section. All acts and parts of acts in conflict herewith be and the same are hereby repealed. [G. S. 1915, § 10023.]

PART OF LAWS OF 1911, CH. 163.

§ 153. Warden or other official to pay to wife or guardian, etc., of minor child of convict sentenced for desertion or nonsupport of wife or children the amount allowed for labor performed. It shall be the duty of the warden, or other official in charge of the penitentiary or reformatory in which any person is confined on account of a sentence at hard labor, under this act, to pay over to the wife, or to the guardian, curator or custodian or his or her minor child or children, or to an organization or individual approved by the court as trustee, at the end of each week, for the support of such wife, child or children, a sum equal to such amount as may be allowed by law to such convict for each day's hard labor performed by said person so confined. [G. S. 1915, § 3416.]

ARTICLE 2.—Labor Performed Outside Penitentiary Grounds.

- §154. Unlawful to allow convict to perform labor for private citizens outside penitentiary grounds; employment of surplus convict labor on roads.
155. Convicts may be detailed to work upon roads and highways or streets and alleys upon request of county or city authorities; county or city to pay additional expense of guarding and furnish tools and materials; county or city to pay to warden one dollar per day for each convict furnished; disposition of earnings of convicts after deducting cost of maintenance and retention.
- §156. Dangerous convicts not to be detailed; efficiency of industrial undertakings at penitentiary not to be impaired.
157. Convicts not to be employed in building bridge or structure requiring skilled labor.
158. Additional good time allowance may be granted to convicts employed on public work for good behavior and cheerful compliance with rules.
159. Repeal of acts in conflict herewith.
160. Inmates of reformatory may be detailed to work of caring for and keeping state fair grounds.

PART OF LAWS OF 1917, CH. 56.

§ 154. Unlawful to allow convict to perform labor for private citizens outside penitentiary grounds; employment of surplus convict labor on roads. It shall be unlawful to allow any convict in the penitentiary to perform any labor for private citizens outside of the penitentiary grounds for hire or otherwise, except on the public highways of the state, and the warden shall employ the surplus convict labor in extending and repairing the state and county roads, and upon other work exclusively for the benefit of the state. [Laws 1917, ch. 56, § 3; May 26.]

LAWS OF 1913, CH. 219.

AN ACT providing for the working of the convicts in the Kansas state penitentiary upon the public roads and highways within any county, and upon the streets and alleys within the cities and incorporated towns located within the state of Kansas, and to repeal all acts and parts of acts in conflict herewith.

§ 155. Convicts may be detailed to work upon roads and highways or streets and alleys upon request of county or city authorities; county or city to pay additional expense of guarding and furnish tools and materials; county or city to pay to warden one dollar per day for each convict furnished; disposition of earnings of convicts after deducting cost of maintenance and retention. Upon the written request of the board of county commissioners of any county or of the mayor and councilmen or mayor and commissioners of any city of the state of Kansas, the warden of the Kansas state penitentiary may detail such convicts as in his judgment shall seem proper, not to exceed the number specified in said written request, to work upon such public roads and highways of such county or streets and alleys of any city or incorporated town within such county, as shall be designated in said written request of said board of county commissioners: *Provided*, That such county shall pay all additional expenses of guarding said convicts while working upon said public roads and highways within such county, and shall furnish all tools and materials necessary in the performance of said work: *And provided*, That when said work is done within the limits of any city or incorporated town within such county or city or incorporated town where said work shall be done, shall likewise pay all additional expenses of guarding such convicts while performing said work, and shall furnish all necessary material used in said work: *And provided*, That the board of county commissioners of any county, or the proper municipal authorities in any city or incorporated town, shall pay to the warden of the state penitentiary a sum of one dollar per day for each convict so furnished by said warden to said authorities: *And provided*, That the earnings of

such convicts, after deducting sufficient thereof to pay and satisfy the cost of maintenance and retention, shall be given to the family of such convict, or dependents if there be any; if there be none, the sums accumulated shall be paid to such convict upon his discharge from the penitentiary. [G. S. 1915, § 10024.]

§ 156. Dangerous convicts not to be detailed; efficiency of industrial undertakings at penitentiary not to be impaired. It shall not be lawful for the warden to detail on public road work any convict whom he believes to be dangerous to himself or to his fellows or to the public, nor shall such a number of convicts be detailed to this work as will impair the efficiency of any industrial undertaking now maintained at the state penitentiary as a matter of prison discipline and penal servitude. [G. S. 1915, § 10025.]

§ 157. Convicts not to be employed in building bridge or structure requiring skilled labor. Said convicts, when employed under the provisions of section one of this act, shall not be used for the purpose of building any bridge or structure of like character, which requires the employment of skilled labor. [G. S. 1915, § 10026.]

§ 158. Additional good time allowance may be granted to convicts employed on public work for good behavior and cheerful compliance with rules. The board of directors of the penitentiary are hereby empowered to adopt a special rule applicable solely to convicts employed upon the public work herein authorized and contemplated whereby convicts so employed shall be granted one additional day as good time allowance out of every three while so engaged on the public work herein authorized and contemplated, conditional upon their good behavior and cheerful compliance with all rules that may be made by the said board or said superintendent for the management and control of convicts so employed, which additional good time allowance shall be in addition to good time allowance otherwise provided by law. [G. S. 1915, § 10027.]

§ 159. Repeal of acts in conflict herewith. All acts and parts of acts in conflict herewith are hereby repealed. [G. S. 1915, § 10028.]

LAWS OF 1913, CH. 346.

A RESOLUTION authorizing the board of correction to detail certain inmates of the industrial reformatory to aid in the care and keeping of the state fair grounds at Hutchinson.

§ 160. Inmates of reformatory may be detailed to work of caring for and keeping state fair grounds. That for the purpose of furnishing useful and healthful labor and discipline for the able-bodied inmates of the Kansas state industrial reformatory at Hutchinson, Kansas, the board of correction may authorize and direct the superintendent of said reformatory to detail any able-bodied inmates of said institution to the work of caring for and keeping any fair grounds which may be obtained by the state board of agriculture, or by the state of Kansas in its behalf, under house bill No. 409 of the Session Laws of 1913. [G. S. 1915, § 10070.]

The "board of correction," mentioned herein, has been superseded by the state board of administration. (Laws 1917, ch. 297.)

"House bill No. 409 of the Session Laws of 1913," mentioned herein, is §§ 10360-10371 of the General Statutes of 1915.

CHAPTER 13.—COUNTY PRISONERS.

§161. County commissioners to work male prisoners sentenced to jail for failure to pay costs or fine and costs, on any street, highway, poor farm, or public works; credit for work performed; release of prisoners.

§162. County commissioners employing prisoners to furnish guards; conveying prisoners; material, tools, etc., to be furnished; eight-hour day.

LAWS OF 1917, CH. 168.

AN ACT relating to the compulsory employment of a male prisoner committed to the jail of any county in the state of Kansas for failing to pay a fine, or costs, or both fine and costs.

§ 161. County commissioners to work male prisoners sentenced to jail for failure to pay costs or fine and costs, on any street, highway, poor farm, or public works; credit for work performed; release of prisoners. That whenever any male person, convicted of a misdemeanor, shall be adjudged to pay the costs of the proceedings by which he was convicted, or a fine or both costs and fine, and for failure to so do shall be committed to the county jail, the board of county commissioners of the county in which such prisoner is confined shall compel such prisoner to work on any street, highway, poor farm or public works under its direction and control. For each day's work so performed by him, such prisoner shall receive a credit of one dollar upon the amount of costs, or fine, or fine and costs, and when his credits thus obtained shall be equal to the amount of such costs, or fine, or fine and costs, he shall be released and set at liberty and such judgment of conviction shall be receipted in full by the board of county commissioners. [Laws 1917, ch. 168, § 1; Feb. 27.]

This act held not to violate § 6 of art. 6, or § 1 of art. 11, of the constitution of this state. The State, *ex rel.*, v. Chase County, 101 K. 564.

§ 162. County commissioners employing prisoners to furnish guards; conveying prisoners; material, tools, etc., to be furnished; eight-hour day. That the board of county commissioners employing such prisoner upon a street, highway, poor farm or any public works shall furnish the necessary guards under the absolute command of the sheriff of the county to manage and control such prisoner and to return him to the county jail at the close of each day's work and also shall furnish all expenses of conveying prisoners to and from the place of employment, all costs of guards, all necessary material, tools, implements, plows, teams, engines, wagons, rock crushers or other equipment of whatever kind or character which said board may deem necessary for working such prisoner to advantage upon such street, highway, poor farm or public work: *Provided*, That no prisoner shall be worked more than eight hours in any twenty-four consecutive hours. [Laws 1917, ch. 168, § 2; Feb. 27.]

CHAPTER 14.—DEPARTMENT OF LABOR AND INDUSTRY.

- §163. Department of labor and industry created under control of commissioner of labor and industry; appointment of commissioner; office in capitol building; term of office; functions of secretary and assistant secretary of state society of labor and industry and state secretary of mine industries to cease; books, papers, etc., to be turned over to commissioner of labor.
164. Qualifications necessary for commissioner of labor and industry.
165. Commissioner of labor and industry *ex officio* state factory inspector, state mine inspector and director of free employment bureau; powers and duties.
166. Commissioner to appoint assistant, chief clerk, statistical clerk, free employment bureau clerk, stenographer, two deputy factory inspectors, inspector of fire escapes and places of amusement, five deputy mine inspectors, and special agents and other assistants; qualifications of inspectors, etc.; compensation; person interested in operating coal mine not to act as mining inspector; persons related by blood or marriage to commissioner, etc., not to be appointed.
167. Commissioner to appoint a woman as one deputy state factory inspector; duties of such inspector; qualifications.
168. Salary of commissioner of labor and industry; salary of assistant, chief clerk, statistical clerk, stenographers, deputy factory inspectors, inspector of fire escapes, etc., deputy mine inspectors, free employment bureau clerk; traveling expenses; clerk and stenographer in mining department; salaries.
169. Appointees of commissioner to be under his control and hold office during his pleasure.
170. Commissioner, assistant commissioner and deputies to give bond for faithful performance of duties.
171. Sections repealed by Laws of 1913, ch. 217; repeal of acts inconsistent with preceding sections.
172. Duties of commissioner; annual reports to the governor to be biennially transmitted to the legislature; matters to be stated in reports; laws to be enforced by commissioner.
173. Commissioner may require answers to interrogatories by person, company or officer of corporation; seal; testimony, oaths, etc.; fees of witnesses testifying before commissioner; penalty for failure to appear as witness, give testimony, answer interrogatories, etc.; witnesses not compelled to go outside of county; information deemed confidential; penalty for violation of foregoing provision.
- §174. Commissioner, deputies, assistants and special agents may enter any factory or mill, workshop, etc., to gather statistics and examine methods and conditions; finding of conditions injurious or dangerous to employees, etc.; notice to owner, etc., to provide safeguards, make alterations or additions; duty to comply with notice and notify commissioner; failure to comply with notice; misdemeanor; prosecution; penalty; safeguards not to be removed except to make immediate repairs; replaced before operating machine; requiring or permitting injurious operation of machine, etc., or continuing dangerous method of operation when prohibited by commissioner or deputy; misdemeanor; penalty; employee, etc., operating machine, etc., without having safeguard in place; misdemeanor; orders and findings of commissioner to be reasonable; actions to vacate and set aside orders, etc.; time for bringing action; precedence over other actions.
175. Meanings of expressions used in this act and as used in other laws relating to employment of labor; "person"; "children"; "minor"; "women"; "factory"; "workshop"; exercise of manual labor in private house, etc.
176. State, county, township and city officers to furnish statistical or other information to commissioner.
177. Printing of annual reports of bureau of labor; number of copies to be printed and distributed; size of report; blanks and stationery to be furnished by secretary of state and paid for from printing fund.
178. Repeal of Laws of 1885, ch. 188, and laws inconsistent with preceding sections.
179. Commissioner of labor to publish annual report of department; information and matter contained in report.
180. Repeal of so much of Laws of 1901, ch. 293, as relates to report of commissioner of labor.

LAWS OF 1913, CH. 217, AS AMENDED BY LAWS OF 1917, CH. 1.

AN ACT creating a department of labor and industry, defining its powers and the duties of the officers thereof, repealing sections 5032, 5033, 5034, 5035, 5036, 5037 and 5038, also sections 8015, 8016, 8023, 8024, General Statutes of 1909, and all laws and parts of laws in conflict with the provisions of this act.

§ 163. Department of labor and industry created under control of commissioner of labor and industry; appointment of commissioner; office in capitol building; term of office; functions of secretary and assistant secretary of state society of labor and industry and state secretary of mine industries to cease; books, papers, etc., to be turned over to commissioner of labor. That a department of labor and industry be and the same is hereby created, to be under the control of a commissioner of labor and industry, who, upon the taking effect of this act, shall be appointed by the governor by and with the consent of the senate, to serve for a term of two years, and until his successor is appointed and qualified, and shall keep his office in the capitol building in Topeka, Kansas: *Provided*, That the term of office of the first commissioner appointed under the provisions of this act, shall expire on the second Monday in January, 1915, or when his successor is appointed and qualified: *Provided*, That upon the qualification of the commissioner of labor and industry appointed as provided by this act, the functions of the secretary and assistant secretary of the state society of labor and industry and of state secretary of mine industries as *ex officio* officers of the state of Kansas, under the laws hereby repealed, shall cease and it shall be their duty to turn over to the commissioner of labor and industry created by this act, all books, papers and property in their possession belonging to the state of Kansas. [G. S. 1915, § 10414.]

§ 164. Qualifications necessary for commissioner of labor and industry. No person shall be eligible to hold the office of commissioner of labor and industry unless he shall have been continuously a resident of the state of Kansas for at least five years preceding his appointment, and have been for at least five years immediately preceding such appointment actively identified with labor in this state, and not be less than thirty years of age. [G. S. 1915, § 10415.]

§ 165. Commissioner of labor and industry *ex officio* state factory inspector, state mine inspector and director of free employment bureau; powers and duties. The commissioner of labor and industry shall be *ex officio* state factory inspector, state mine inspector, and director of the free employment bureaus, and is hereby given full jurisdiction over and control of factory, work shop and mill inspection, mine inspection and the free employment bureau, and all the duties now imposed by existing laws upon the commissioner of the bureau of labor and industry and state factory inspector, state mine inspector and director of the free employment bureau shall from and after the taking effect of this act, devolve upon the commissioner of labor and industry appointed as herein provided. [G. S. 1915, § 10416.]

§ 166. Commissioner to appoint assistant, chief clerk, statistical clerk, free employment bureau clerk, stenographer, two deputy factory inspectors, inspector of fire escapes and places of amusement, five deputy mine inspectors, and special agents and other assistants; qualifications of inspectors, etc.; compensation; person interested in operating coal mine not to act as mining inspector; persons related by blood or marriage to commissioner, etc., not to be appointed. The commissioner of labor and industry shall appoint an assistant commissioner who shall have had at least five years' practical experience as a miner, particularly in coal mines, and have been a resident of the state of Kansas for at least two years immediately preceding his appointment. The commissioner of labor and indus-

try shall also appoint one chief clerk, one statistical clerk, one free employment bureau clerk, one stenographer, two deputy state factory inspectors one inspector whose duties shall be to inspect fire escapes and all places of amusement who shall have a practical knowledge of building with at least five years' experience and five deputy state mine inspectors, and in addition he may also employ special agents and such other assistants as may be necessary in the discharge of his official duties and such officials shall have been residents of the state for at least two years. Such special agents and other assistants shall be paid for the services rendered, such compensation as the commissioner may deem proper, but no such agents or assistants shall be paid more than four dollars per day in addition to necessary traveling expenses: *Provided*, That no manager or agent or mining engineer of any coal mine, or any person interested in operating any coal mine, shall at any time act as a mining inspector under this act: *Provided further*, That no person shall be appointed to any subordinate position by said commissioner, under the terms of this act who is related by blood or marriage to such commissioner or to any of his principal assistants. [G. S. 1915, § 10417.]

§ 167. Commissioner to appoint a woman as one deputy state factory inspector; duties of such inspector; qualifications. The commissioner of labor and industry shall appoint as one of the deputy state factory inspectors a woman who, under the direction of the commissioner of labor and industry, shall have charge of the enforcement of all laws relating to the health, sanitary conditions, surroundings, hours of labor and all other laws affecting the employment of female wage earners. Such woman shall be a qualified elector of this state, shall have had at least two years' actual experience along the line of her labors as prescribed by this act and who shall have been a resident of the state of Kansas for at least two years immediately preceding such appointment. [G. S. 1915, § 10418.]

§ 168. Salary of commissioner of labor and industry; salary of assistant, chief clerk, statistical clerk, stenographers, deputy factory inspectors, inspector of fire escapes, etc., deputy mine inspectors, free employment bureau clerk; traveling expenses; clerk and stenographer in mining department; salaries. The commissioner of labor and industry shall receive as salary the sum of \$2500 per annum, and actual and necessary expenses incurred in the performance of his duties. The assistant commissioner of labor and industry shall receive as salary the sum of \$1500 per annum, together with his actual and necessary expense incurred in the performance of his duties. The chief clerk shall receive as salary the sum of \$1200 per annum. The statistical clerk shall receive as salary the sum of \$1000 per annum, and the commissioner shall be allowed to appoint two stenographers who shall each receive as salary the sum of \$900 per annum. The deputy state factory inspectors shall receive as salary the sum of \$1200, each, per annum, and all actual and necessary traveling expenses. The inspector of fire escapes and places of amusement shall receive a salary of \$1200 per annum, and actual and necessary traveling expenses. The deputy state mine inspectors shall each receive as salary the sum of \$100 per month, with actual and necessary traveling expenses. The free employment bureau clerk shall receive a salary of \$1000 per annum and all actual and necessary traveling expenses. The commissioner shall also appoint in the mining department at Pittsburg one clerk

at a salary of \$1080 per annum, and one stenographer in the mining department at Pittsburg at a salary of \$720 per annum. [G. S. 1915, § 10419, as amended by Laws 1917, ch. 1, § 5; March 16.]

§ 169. Appointees of commissioner to be under his control and hold office during his pleasure. All appointees made by the commissioner of labor and industry shall be under his direction and control, and shall hold their office during his pleasure. [G. S. 1915, § 10420.]

§ 170. Commissioner, assistant commissioner and deputies to give bond for faithful performance of duties. The commissioner of labor and industry, assistant commissioner, deputy factory inspectors and deputy mine inspectors shall give bond for the faithful performance of their duties in such sum as the executive council shall determine. [G. S. 1915, § 10421.]

§ 171. Sections repealed by Laws of 1913, ch. 217; repeal of acts inconsistent with preceding sections. Sections 5032, 5033, 5034, 5035, 5036, 5037, 5038, and sections 8015, 8016, 8023, and 8024, General Statutes of 1909 and all laws and parts of laws inconsistent with the provisions of this act are hereby repealed. [G. S. 1915, § 10422.]

LAWS OF 1898, CH. 34, AS AMENDED BY LAWS OF 1917, CH. 228.

§ 172. Duties of commissioner; annual reports to the governor to be biennially transmitted to the legislature; matters to be stated in reports; laws to be enforced by commissioner. It shall be the duty of the commissioner to collect, assort, arrange and present in annual reports to the governor, to be by him biennially transmitted to the legislature, statistical details relating to all departments of labor and industrial pursuits in the state; to the subjects of coöperation, strikes and other labor difficulties; to trade unions and other labor organizations and their effect upon labor and capital; to other matters relating to the commercial, industrial, social, educational, moral and sanitary conditions prevailing within the state; and the exploitation of such other subjects as will tend to promote the permanent prosperity of the respective industries of the state. It shall also be the duty of the commissioner of the bureau to cause to be enforced all laws regulating the employment of children, minors, and women; all laws established for the protection of health, lives and limbs of operators in workshops and factories, on railroads, and other places; and all laws enacted for the protection of the working classes now in force or that may hereafter be enacted. In its annual report the bureau shall also give an account of all proceedings which have been taken in accordance with the provisions of this act, or any of the other laws herein referred to, and in addition thereto such remarks, suggestions and recommendations as the commissioner may deem necessary for the information of the legislature. [G. S. 1915, § 10423.]

Laws 1898, ch. 34, §§ 1-2, were repealed by Laws 1913, ch. 217, § 9, printed as § 171, *supra*.

§ 173. Commissioner may require answers to interrogatories by person, company or officer of corporation; seal; testimony, oaths, etc.; fees of witnesses testifying before commissioner; penalty for failure to appear as witness, give testimony, answer interrogatories, etc.; witnesses not compelled to go outside of county; information deemed confidential; penalty for violation of foregoing provision. The commissioner is hereby authorized to furnish and deliver a written or printed list of interroga-

tories to any person, company, or the proper officer of any corporation operating within the state, and require full and complete answers to be made thereto, and returned under oath. The commissioner shall have a seal, and have power to take and preserve testimony, to issue subpoenas and administer oaths, and examine witnesses under oath in all matters relating to the duties herein required by said bureau, such testimony to be taken in some suitable place in the vicinity to which the testimony is applicable. Witnesses subpoenaed and testifying before the commissioner of said bureau shall be paid the same fees as witnesses before the district court; such payment to be made from the incidental fund of the bureau. Any person duly subpoenaed under the provisions of this act who shall willfully neglect or refuse to attend, or refuse to answer any question propounded to him concerning the subject of such examination as provided in this act, or if any person to whom a written or printed list of interrogatories has been furnished by said commissioner shall neglect or refuse to answer and return the same under oath, such person or persons shall be deemed guilty of a misdemeanor, and upon complaint of the commissioner before a court of competent jurisdiction, and upon conviction thereof, such person or persons shall be fined in a sum not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment: *Provided, however,* That no witness shall be compelled to go outside of the county in which he resides to testify. In the report of said bureau no use shall be made of the names of individuals, firms or corporations supplying the information called for by this act, unless by written permission, such information being deemed confidential and not for the purpose of disclosing personal affairs; and any officer, agent or employee of the bureau violating this provision shall forfeit a sum not exceeding five hundred dollars, or be imprisoned not more than one year. [G. S. 1915, § 10424.]

Concerning reporting of accidents, by employers, see § 11, *ante*, and note.

§ 174. Commissioner, deputies, assistants and special agents may enter any factory or mill, workshop, etc., to gather statistics and examine methods and conditions; finding of conditions injurious or dangerous to employees, etc.; notice to owner, etc., to provide safeguards, make alterations or additions; duty to comply with notice and notify commissioner; failure to comply with notice; misdemeanor; prosecution; penalty; safeguards not to be removed except to make immediate repairs; replaced before operating machine; requiring or permitting injurious operation of machine, etc., or continuing dangerous method of operation when prohibited by commissioner or deputy; misdemeanor; penalty; employee, etc., operating machine, etc., without having safeguard in place; misdemeanor; orders and findings of commissioner to be reasonable; actions to vacate and set aside orders, etc.; time for bringing action; precedence over other actions. *Further Powers.* The commissioner of labor and industry as state factory inspector, his deputies, assistants and special agents, shall have power to enter any factory or mill, workshop, private works or state institution having shops or factories, mercantile establishment, laundry or any other place of business where and when labor is being performed, when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this act, and to examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places and

to keep a record thereof of such inspection. If it shall be found upon such investigation that the heating, lighting, ventilation or sanitary arrangement of any such establishment or place is such as to be injurious to the health of persons employed or residing therein, or that the means of egress in case of fire or other disaster are not sufficient, or that the belting, shafting, gearing, elevators, drums, saws, cogs or machinery, in any such establishment or place are so located, or are in a condition so as to be dangerous, or are not sufficiently guarded, or that the vats, pans or any other structures filled with molten metal or hot liquid are not surrounded with proper safeguards for preventing accidents or injury to those employed at, or near them, or that the construction or condition of any building or buildings, or any boiler, machinery or other appurtenance in or about any place as described in this section is such as to be dangerous or injurious to the persons employed or residing therein, or that the methods of operation are such as to be unnecessarily dangerous or injurious to the persons employed or residing therein, or that any other condition which is within the control of the owner, proprietor, agent or lessee of any such building, establishment or place be found to be dangerous or injurious to any persons employed therein or to any other person or persons, the officer making such inspection shall notify in writing the owner, proprietor, agent, or lessee of such building, establishment, or place, to provide such safeguards or safety devices, or to make such alterations or additions or to make the changes in methods of operation by him deemed necessary for the safety and protection of the employees or other persons endangered by such conditions, and it shall be the duty of the person or persons receiving such notice to use all proper diligence to comply with the recommendations contained in said notice, and immediately upon completion thereof to mail or deliver a written notice to the commissioner of labor at Topeka, Kansas, stating that said safeguards or safety devices have been provided or that said alterations or additions or changes in methods of operation have been fully made, and if such safeguards or safety devices are not provided, or said alterations or additions, or changes in methods of operation are not made, and the commissioner of labor notified thereof, as provided herein, within thirty days, or within such time as such safeguards or safety devices can be provided or said alterations or additions or said changes in methods of operation can be made, and the commissioner of labor notified thereof, with proper diligence upon the part of such owner, proprietor, agent or lessee, said owner, proprietor, agent or lessee so notified shall be deemed guilty of a misdemeanor, and upon complaint of the commissioner of labor, as state factory inspector, or his deputy or special agent, before a court of competent jurisdiction, and upon conviction thereof shall be fined in a sum of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment not more than ninety days, or by both such fine and imprisonment. No person, firm or corporation, nor any officer, agent or employee thereof, shall remove or require to be removed, or made ineffective any practical safeguard around or safety attachment to any machinery, vats, pan, or other apparatus or device mentioned in this section while the same is in use, except for the purpose of immediately making repairs thereto, and all safeguards or safety attachments so removed shall be promptly replaced before the said dangerous machine, apparatus or device is put into use or operation, and any person, firm, or corporation, or any officer, agent or employee thereof who shall require

or permit such unnecessarily dangerous machine, apparatus or device under his or their control to be used or operated without said safeguard being in proper place and condition for the safety and protection of the operator or other person or persons, or who shall require or permit the continuance of such unnecessarily dangerous or injurious method of operation which has been prohibited by the commissioner of labor or his deputy by written recommendation, as provided in this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25 nor more than \$100 and each day of continued violation of this provision shall constitute a separate offense. Any employee or any other person who shall operate any dangerous machine, apparatus or device for which a practical safeguard or safety attachment is provided, and of which said person or persons have knowledge, without such safeguard or safety attachment being in proper place for the protection of such employee or other persons, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than five dollars nor more than twenty-five dollars, or by imprisonment not exceeding thirty (30) days or by both such fine and imprisonment: *Provided further*, That all orders and findings of the commissioner of labor and industry under this act shall be reasonable. Any person, company or corporation dissatisfied with an order of the commissioner of labor and industry under this act may, within thirty days after the same is made and promulgated, commence an action in any court of competent jurisdiction against the commissioner of labor and industry as defendant, to vacate and set aside any such order, finding or decision of the commissioner of labor and industry, on the ground that such order, finding and decision is unlawful or unreasonable. Actions brought under this section shall have precedence in any court, and on motion shall be advanced over any civil cause of a different nature pending in such court, and such action shall be tried and determined as other civil actions. [G. S. 1915, § 10425, as amended by Laws 1917, ch. 228, § 1; March 26.]

§ 175. Meanings of expressions used in this act and as used in other laws relating to employment of labor; "person"; "children"; "minor"; "women"; "factory"; "workshop"; exercise of manual labor in private house, etc. The following expressions used in this act shall have the following meanings: The expression "person" means an individual, corporation, partnership, company, or association. The expression "children" means minor persons under the age of fourteen years. The expression "minor" means a male person under the age of twenty-one years, or a female person under the age of eighteen years. The expression "women" means female persons of eighteen years of age and upward. The expression "factory" means any premises where steam, water or other mechanical power is used in aid of any manufacturing process there carried on. The expression "workshop" means any premises, room, or place, not being a factory as above defined, wherein any manual labor is exercised by way of trade, or for the purpose of gain in or incidental to any process of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article, and to which or over which premises, room or place the employer of the person or persons working therein has the right of access or control: *Provided, however*, That the exercise of such manual labor in a private house, or a private room, by the family dwelling therein, or by any of them, or in case a majority of persons therein employed are members of such family, shall

not of itself constitute such house or room a workshop within this definition. The aforesaid expressions shall have the meanings above defined for them respectively in all laws of this state relating to the employment of labor, unless a different meaning is plainly required by the context. [G. S. 1915, § 10426.]

Definitions here given not applicable to construction of factory act. *Raines v. Stone*, 87 K. 116.

§ 176. State, county, township and city officers to furnish statistical or other information to commissioner. All state, county, township and city officers are hereby directed to furnish said commissioner, upon his request, such statistical or other information contemplated by this act as shall be in their possession as such officers. [G. S. 1915, § 10427.]

§ 177. Printing of annual reports of bureau of labor; number of copies to be printed and distributed; size of report; blanks and stationery to be furnished by secretary of state and paid for from printing fund. The annual reports of the bureau of labor and industry provided for in this act shall be printed in the same manner and under the same regulations as the reports of the executive officers of the state: *Provided*, Not less than three thousand nor more than ten thousand copies of the report shall be printed and distributed annually, as the judgment of the commissioner may deem best: *And provided further*, That said report shall not contain more than six hundred pages. The blanks and other stationery required in accordance with the provisions of this act shall be furnished by the secretary of state upon the requisition of the commissioner of said bureau, and paid for from the printing fund of the state. [G. S. 1915, § 10428.]

Laws 1898, ch. 34, §§ 9-10, were repealed by Laws 1913, ch. 217, § 9, printed as § 171, *ante*.

§ 178. Repeal of Laws of 1885, ch. 188, and laws inconsistent with preceding sections. Chapter 188 of the Laws of 1885, and all other acts or parts of acts inconsistent with the provisions of this act, are hereby repealed. [G. S. 1915, § 10429.]

LAWS OF 1905, CH. 279.

§ 179. Commissioner of labor to publish annual report of department; information and matter contained in report. That the commissioner of labor is hereby authorized and required to publish annually a report of his department, and said report shall contain the information and matter required by law for the full period since his last report. [G. S. 1915, § 10430.]

§ 180. Repeal of so much of Laws of 1901, ch. 293, as relates to report of commissioner of labor. That so much of chapter 293 of the Session Laws of 1901 as relates to the report of the commissioner of labor, and all acts or parts of acts in conflict herewith, are hereby repealed. [G. S. 1915, § 10431.]

Laws of 1901, ch. 293, is section 10898 of the General Statutes of 1915.

CHAPTER 15.—ELECTIONS.

- §181. Employees to have two hours in which to vote; application for leave of absence; penalty for refusing to employee such time to vote or attempting to influence vote of employee.
182. Unlawful to pay person, firm or corporation to convey voters to polling place or place of registration.
183. Unlawful for person, firm or corporation to accept employment or compensation for purpose of con-

- veying electors to polling place or place of registration, or to drive or be in charge of vehicles being so used.
- §184. Penalty for violation of two preceding sections; conveying of each elector shall constitute a separate offense.
185. Hours of voting at all elections; cities of first and second class; precincts outside incorporated cities.

PART OF LAWS OF 1897, CH. 129.

§181. Employees to have two hours in which to vote; application for leave of absence; penalty for refusing to employee such time to vote or attempting to influence vote of employee. Any person entitled to vote at a general election in this state shall, on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed for a period of two hours between the time of opening and closing the polls, and such voter shall not because of so absenting himself be liable to any penalty, nor shall deduction be made, on account of such absence, from his usual salary or wages: *Provided, however,* That application for such leave of absence shall be made prior to the day of election. The employer may specify the hours during which said employee may absent himself as aforesaid. Any person or corporation who shall refuse to an employee the privilege hereby conferred, or shall subject an employee to a penalty or deduction of wages because of the exercise of such privileges, or who shall in any manner attempt to influence or control such voter as to how he shall vote, by offering any reward, or by threatening his discharge from employment, or otherwise intimidating him from a full and free exercise of his right to vote, or shall directly or indirectly violate the provisions of this section, shall be deemed guilty of a misdemeanor, and be fined in any sum not less than fifty dollars nor more than one hundred dollars. [G. S. 1915, § 4219.]

LAWS OF 1915, CH. 213.

AN ACT in relation to elections and prescribing penalty for the violation of the provisions thereof.

§ 182. Unlawful to pay person, firm or corporation to convey voters to polling place or place of registration. That it shall be unlawful for any candidate for any public office or for any officer or member of any state, district, county, city, ward or township committee, or of any club, organization or association designed to promote, or engaged in promoting the success or defeat of any party, or the election or defeat of any candidate for public office, or the carrying or defeat of any measure, to directly or indirectly employ or pay or furnish money for the purpose of employing or paying any person, firm or corporation to convey in hacks, carriages, automobiles or other conveyances any voter or voters to any polling place at any primary, general or other election, or for conveying any person to any place of registration for the purpose of having such voter registered. [G. S. 1915, § 4352.]

§ 183. Unlawful for person, firm or corporation to accept employment or compensation for purpose of conveying electors to polling place or

place of registration, or to drive or be in charge of vehicles being so used. It shall be unlawful for any person, firm, or corporation to accept any employment or compensation from any candidate, club, or organization, or officer or member thereof, as referred to in section 1 hereof, for the purpose of conveying in any hack, carriage, automobile or other vehicle, any elector to any polling or registration place in this state for the purpose of voting or being registered, or to drive or be in charge of any hack, automobile or other vehicle being so used. [G. S. 1915, § 4353.]

§ 184. Penalty for violation of two preceding sections; conveying of each elector shall constitute a separate offense. Any person violating the terms of this act shall upon conviction be deemed guilty of a misdemeanor and punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment, and the conveying of each and every elector so conveyed to any such polling or registration place shall constitute a separate offense. [G. S. 1915, § 4354.]

LAWS OF 1909, CH. 141, AS AMENDED BY LAWS OF 1917; CH. 182.

AN ACT fixing the hours of voting in all elections, and repealing section 4234 of the General Statutes of 1915.

§ 185. Hours of voting at all elections; cities of first and second class; precincts outside incorporated cities. That the hours of voting at all general elections, primary elections, city elections and special elections shall be from 8 o'clock in the morning until 6 o'clock at night, except in cities of the first and second class, in which the hours of voting shall be from 6 o'clock in the morning until 7 o'clock in the evening: *Provided, however,* That before the hours last herein stated shall be operative in any cities of the second class, the governing body of said cities shall have provided for such hours by ordinance duly passed and published: *Provided,* That the hour for the opening of the polls of any precinct lying outside of any incorporated city in this state may be fixed at an hour not earlier than 6 o'clock in the morning, by order of the county commissioners, upon the written application of the township board wherein said precinct is located. [G. S. 1915, § 4234, as amended by Laws 1917, ch. 182, § 1; Feb. 26.]

CHAPTER 16.—EMPLOYMENT OFFICES AND AGENCIES.*

- §186. Employment agency not to be conducted or fee or commission charged for obtaining employment, without obtaining license from director of state free employment bureau; fee for such license; matters to be designated in such license; license and copy of act to be posted in each such agency.
187. Date of termination of such licenses; payment for fractional part of year.
188. Bond to be required with each application for such license; amount and conditions of such bond.

- §189. Director authorized to commence action on such bond by filing complaint with proper prosecuting officer.
190. Revocation of license by director for violation of act; written complaint; hearing of case.
191. Register to be kept by each licensed agency; entries to be made in such register; register to be kept open to inspection of director, deputies, etc.

* See, also, Ch. 19—Free Employment Bureau and Free Employment Agencies.

- §192. Amount of registration fee that may be charged by licensed agency on filing application for employment or help; duplicate receipt to be given; contents of such receipt; fee to be returned on demand if employment or situation not obtained within three days.
193. Licensed agency not to publish false notices or advertisements, give false information, make false promises or make false entries in register.

- §194. Duty of director, deputies, etc., to file complaint when informed of violation of act; duty of official to institute criminal proceedings.
195. Penalty for violation of any of the provisions of this act.
196. Moneys received by director from fees to be accounted for by him and to become part of state general fund.
197. Free employment bureaus not subject to provisions of this act.

LAWS OF 1911, CH. 187.

AN ACT relating to employment offices and agencies operated to furnish employers with persons to be engaged in manual labor, clerical, industrial, commercial, or business pursuits, and to secure employment for such described persons; prescribing penalties for the violation of this act.

§ 186. Employment agency not to be conducted or fee or commission charged for obtaining employment, without obtaining license from director of state free employment bureau; fee for such license; matters to be designated in such license; license and copy of act to be posted in each such agency. That no person, firm or corporation of this state shall open, operate and maintain an employment agency or office to furnish to employers persons seeking to be engaged in manual labor, clerical, industrial, commercial or business pursuits, and to secure employment for such described persons or where a fee, commission or other consideration is charged to or exacted or received from either applicants for employment or for help, without first obtaining a license for the same from the director of the state free employment bureau. The uniform fee for such license in cities of 20,000 inhabitants and over shall be twenty-five dollars per annum, and, in cities containing less than 20,000 inhabitants, ten dollars per annum. Every license shall contain a designation of the city, street and number of the building in which the licensed party conducts such employment agency. The license together with a copy of this act shall be posted in a conspicuous place in each and every employment agency. [G. S. 1915, § 5858.]

Commissioner of labor and industry is *ex officio* director of free employment bureau, see § 165, *ante*.

§ 187. Date of termination of such licenses; payment for fractional part of year. All licenses issued after this act takes effect shall terminate on the 31st day of December of each year, and shall be paid for at the rate established in this act: *Provided, however*, That no license for any fractional part of the year shall be issued for any sum less than one-third of the full annual rate, and that fractional months shall be counted as full months in every case. [G. S. 1915, § 5859.]

§ 188. Bond to be required with each application for such license; amount and conditions of such bond. That the director of the state free employment bureau shall require with each application for a license a bond in the penal sum of five hundred dollars with one or more sureties to be approved by said director, and conditioned that the obligors will not violate any of the duties, terms, conditions, provisions or requirements of this act. [G. S. 1915, § 5860.]

§ 189. Director authorized to commence action on such bond by filing complaint with proper prosecuting officer. That the said director is authorized to commence action or actions on said bond or bonds in the

name of the state of Kansas, by filing complaint with the attorney-general or other proper prosecuting officer of any violations of its conditions. [G. S. 1915, § 5861.]

§ 190. Revocation of license by director for violation of act; written complaint; hearing of case. That the said director is also authorized to revoke any license, whenever in his judgment, the party licensed shall have violated any of the provisions of this act: *Provided*, Written complaint shall have been filed with him and he shall have given the case full and fair hearing. [G. S. 1915, § 5862.]

§ 191. Register to be kept by each licensed agency; entries to be made in such register; register to be kept open to inspection of director, deputies, etc. That it shall be the duty of every licensed agency to keep a register in which shall be entered the name and address of every person who shall make application for help or servants, and the name and nature of such employment for which such help shall be wanted. Such register shall, at all reasonable hours be kept open to the inspection and examination of the director of the state free employment bureau and his agents, deputies or assistants. [G. S. 1915, § 5863.]

§ 192. Amount of registration fee that may be charged by licensed agency on filing application for employment or help; duplicate receipt to be given; contents of such receipt; fee to be returned on demand if employment or situation not obtained within three days. That where a registration fee is charged for receiving or filing applications for employment or help, said fee shall in no case, exceed the sum of one dollar, unless the salary or wages shall be more than three dollars per day, in which case a fee of not more than two dollars may be charged, for which a duplicate receipt shall be given, (one copy to be kept by the employee and the other for the employer) in which shall be stated the name and address of the applicant, the date of such application, the amount of the fee, and the nature of the work to be done or the situation to be procured. In case the said applicant shall not obtain a situation or employment through such licensed agency within three days after registration as aforesaid, then said licensed agency shall forthwith repay and return to such applicant, upon demand being made therefor, the full amount of the fee paid or delivered by said applicant to such licensed agency. [G. S. 1915, § 5864.]

§ 193. Licensed agency not to publish false notices or advertisements, give false information, make false promises or make false entries in register. That any licensed agency shall not publish or cause to be published any false or fraudulent notice or advertisement, or give any false information or make any false promise concerning or relating to work or employment to any one who shall apply for employment, and no licensed agency shall make false entries in the register to be kept as herein provided. [G. S. 1915, § 5865.]

§ 194. Duty of director, deputies, etc., to file complaint when informed of violation of act; duty of official to institute criminal proceedings. That it shall be the duty of the director of the state free employment bureau, or his deputies, agents or assistants, when informed of any violation of this act, to file a complaint of such violation with the attorney-general or with the county attorney of the county in which such violation is alleged to have occurred and it shall be the duty of the official informed to institute criminal proceedings for the enforcement of the penalties. [G. S. 1915, § 5866.]

§ 195. Penalty for violation of any of the provisions of this act. That any person convicted of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars for each offense, or be imprisoned in the county jail for a period of not exceeding six months, or both such fine and imprisonment as the court may direct. [G. S. 1915, § 5867.]

§ 196. Moneys received by director from fees to be accounted for by him and to become part of state general fund. That all money or moneys received from fees under this act, shall be accounted for by the director of the state free employment bureau, and by him turned over to the state treasurer to become a part of the state general fund, said director to take the state treasurer's receipt for same. [G. S. 1915, § 5868.]

§ 197. Free employment bureaus not subject to provisions of this act. That free employment bureaus now organized or established, or which may hereafter be organized or established in this state by the director of the state free employment bureau or by charitable organizations shall not be subject to the provisions of this act. [G. S. 1915, § 5869.]

CHAPTER 17.—EXPLOSIVES, STORAGE, HANDLING, ETC.*†

§198. Record of sale, etc., of explosives to be kept; what record shall contain; record to be signed by person, etc., receiving such explosives; record to be preserved for one year; record open to inspection of certain officers; act not to apply to black or blasting and gun powder.

199. Explosives not to be sold, given away, etc., to intoxicated or irresponsible person; negligent handling or exposing of explosives.

200. Having explosives in possession without having executed receipt

deemed violation of act in like manner as disposing of same without taking receipt and making record.

§201. Location of magazines or storage houses in which explosives shall be kept for sale or storage; quantity of explosives; storing of nitroglycerine.

202. Explosives mentioned in this act shall not be carried concealed or partly concealed about the person.

203. Penalties for violating preceding sections.

204. Repeal of acts in conflict herewith.

* Concerning the use of dynamite and other detonating explosives in coal mines, see ch. 26, art. 4.

†(b) Vendor's license, authorizing the purchase, possession, and sale of explosives or ingredients.

† FEDERAL ACT CONCERNING EXPLOSIVES IN TIME OF WAR.

(Passed October 6, 1917.)

Title of act: AN ACT to prohibit the manufacture, distribution, storage, use and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes.

The act provides "that when the United States is at war it shall be unlawful to manufacture, distribute, store, use or possess powder, explosives, blasting supplies, or ingredients thereof, in such manner as to be detrimental to the public safety, except as in this act provided."

"Small arms or shotgun cartridges" are excepted from the operation of the act.

Concerning the purchase, possession, sale, etc., of explosives the act provides:

(Sec. 5.) "That from and after forty days after the passage and approval of this act no person shall have in his possession or purchase, accept, receive, sell, give, barter or otherwise dispose of or procure explosives, or ingredients, except as provided in this act: *Provided*, That the purchase or possession of said ingredients when purchased or held in small quantities and not used or intended to be used in the manufacture of explosives are not subject to the provisions of this act: *Provided further*, That the superintendent, foreman, or other duly authorized employee, at a mine, quarry, or other work, may, when

LAWS OF 1915, CH. 272, AS AMENDED BY LAWS OF 1917, CH. 171.

AN ACT providing for public safety by regulating the storage, handling and disposition of dynamite, giant powder, nitroglycerine, gun cotton and other detonating explosives, providing penalties for violation of this act, and repealing all acts in conflict herewith.

§ 198. Record of sale, etc., of explosives to be kept; what record shall contain; record to be signed by person, etc., receiving such explosives; record to be preserved for one year; record open to inspection of certain officers; act not to apply to black or blasting and gun powder. Any person, firm or corporation, in this state, who shall sell, give away or otherwise dispose of, any dynamite, giant powder, nitroglycerine, gun cotton or other detonating explosive, shall keep a record, in a substantially bound book, which record shall set forth the kind and amount of explosives delivered, the time of delivery, the uses and purposes for which same are delivered and the place at which it is to be used, and said record shall not be deemed complete until the person, firm or corporation so receiving said explosives, and to whom delivery is made, shall acknowledge, in writing, the receipt thereof by signing said record, in good legible handwriting; which said record and the book in which it is kept and contained, shall be safely preserved by the person, firm or corporation so disposing of said explosives as aforesaid for a period of not less than one year from the date of the said receipt, and said record shall be open for the inspection of any police or peace officer mine inspector or fire marshal of this state at all reasonable hours: *Provided*, That this act shall not include what is commonly known as black or blasting and gun powder. [G. S. 1915, § 3813.]

§ 199. Explosives not to be sold, given away, etc., to intoxicated or irresponsible person; negligent handling or exposing of explosives. No person, firm or corporation shall at any time, under any conditions, sell,

licensed so to do, sell or issue, to any workman under him, such an amount of explosives, or ingredients, as may be required by that workman in the performance of his duties, and the workman may purchase or accept the explosives, or ingredients, so sold or issued, but the person so selling or issuing same shall see that any unused explosives, or ingredients, are returned, and that no explosives, or ingredients, are taken by the workman to any point not necessary to the carrying on of his duties."

(Sec. 9.) "That from and after forty days after the passage and approval of this act every person authorized to sell, issue, or dispose of explosives shall keep a complete itemized and accurate record, showing each person to whom explosives are sold, given, bartered, or to whom or how otherwise disposed of, and the quantity and kind of explosives, and the date of each such sale, gift, barter, or other disposition, and this record shall be sworn to and furnished to the Director of the Bureau of Mines, or his authorized representatives whenever requested."

The act provides for the issuance of the following licenses, among others, by the Director of the Bureau of Mines:

"(c) Purchaser's license, authorizing the purchase and possession of explosives and ingredients.

"(d) Foreman's license, authorizing the purchase and possession of explosives and ingredients, and the sale and issuance of explosives and ingredients to workmen under the proviso to section five above."

Licenses are to be issued only to "citizens of the United States of America, and to the subjects or citizens of nations that are at peace with them, and to corporations, firms, and associations thereof." License may be refused to any person or firm, etc., when there is reason to believe that such person or the controlling members of such firm, etc., are disloyal to the United States of America. Licenses may be revoked for the like reason. Person to whom license is refused or whose license is revoked may apply to the Council of National Defense.

"That any person desiring to manufacture, sell, export, import, store, or purchase explosives or ingredients, or to keep explosives or ingredients in his possession, shall make application for a license, which application shall state, under oath, the name of the applicant; the place of birth; whether native born or naturalized citizen of the United States

give away or otherwise dispose of any of the explosives named above in the preceding section, to any intoxicated or irresponsible person, nor shall any person, firm or corporation carelessly or negligently handle or expose any of said explosives at any time. [G. S. 1915, § 3814.]

§ 200. Having explosives in possession without having executed receipt deemed violation of act in like manner as disposing of same without taking receipt and making record. Any person, firm or corporation who shall be found in the possession or control of any explosive mentioned above, without having executed the receipt heretofore provided for, shall be deemed to have violated this act in like manner as the person, firm or corporation who shall sell or dispose of same without taking the receipt and making the record as stated above. [G. S. 1915, § 3815.]

§ 201. Location of magazines or storage houses in which explosives shall be kept for sale or storage; quantity of explosives; storing of nitro-glycerine. No person, firm or corporation shall keep any explosives heretofore named in section one of this act, on hand, for sale, or storage, other than in a suitable magazine or storage house, which magazine or storage house shall be not closer than 50 feet to any inhabited building when the total amount of said explosives does not exceed 50 pounds; and when the supply exceeds fifty pounds but does not exceed one hundred pounds the distance shall be not less than 225 feet; when the supply exceeds one hundred pounds but does not exceed 200 pounds the distance shall not be less than 240 feet; when the supply exceeds 200 pounds but does not exceed 300 pounds the distance shall be not less than 250 feet; and when the supply exceeds 300 pounds but does not exceed 1000 pounds the dis-

of America; if a naturalized citizen, the date and place of naturalization; business in which engaged; the amount and kind of explosives or ingredients which during the past six months have been purchased, disposed of, or used by him; the amount and kind of explosives or ingredients now on hand; whether sales, if any, have been made to jobbers, wholesalers, retailers, or consumers; the kind of license to be issued, and the kind and amount of explosives or ingredients to be authorized by the license; and such further information as the Director of the Bureau of Mines may, by rule, from time to time require.

"Applications for vendor's, purchaser's, or foreman's licenses shall be made to such officers of the state, territory, or dependency having jurisdiction in the district within which the explosives or ingredients are to be sold or used, and having the power to administer oaths as may be designated by the Director of the Bureau of Mines, who shall issue the same in the name of such director. Such officers shall be entitled to receive from the applicant a fee of 25 cents for each license issued."

The President is authorized to appoint an explosives inspector in each state.

It is made unlawful for any person to represent himself as having a license when he has not, or as having a different license than he in fact has.

(Sec. 16.) "That every person authorized under this act to manufacture or store explosives or ingredients shall clearly mark and define the premises on which his plant or magazine may be and shall conspicuously display thereon the words "Explosive—Keep Off."

(Sec. 17.) "That no person, without the consent of the owner or his authorized agents, except peace officers, the Director of the Bureau of Mines and persons designated by him in writing, shall be in or upon any plant or premises on which explosives are manufactured or stored, or be in or upon any magazine premises on which explosives are stored; nor shall any person discharge any firearms or throw or place any explosives or inflammable bombs at, on, or against any such plant or magazine premises, or cause the same to be done."

(Sec. 18.) "That the Director of the Bureau of Mines is hereby authorized to make rules and regulations for carrying into effect this act, subject to the approval of the Secretary of the Interior."

(Sec. 19.) "That any person violating any of the provisions of this act, or any rules or regulations made thereunder, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$5,000 or by imprisonment not more than one year, or by both such fine and imprisonment."

The act further provides for the investigation of all explosions and fires, and for the prosecution of persons responsible therefor. It also provides for coöperation with the several states, etc.

tance shall be not less than 300 feet; and when the supply exceeds 1000 pounds the distance shall not be less than 325 feet: *Provided*, That nitroglycerine in any quantity shall be stored in a suitable magazine or storehouse situated not closer than 1000 feet to any inhabited building or public road, so constructed that such explosive kept therein shall be at least two feet below the surface of the surrounding ground. [G. S. 1915, § 3816, as amended by Laws 1917, ch. 171, § 1; March 28.]

Dynamite stored in violation of city ordinance; proximate cause of death of fireman on duty at building. *Pinson v. Young*, 100 K. 452.

§ 202. Explosives mentioned in this act shall not be carried concealed or partly concealed about the person. No person having in his possession any of the explosives mentioned in this act shall carry the same in a wholly or partially concealed manner on or about his person. [G. S. 1915, § 3817.]

§ 203. Penalties for violating preceding sections. Any person, firm or corporation violating any of the provisions of this act shall be adjudged guilty of a misdemeanor and shall be punished, if an individual, by a fine of not less than \$25 nor more than \$100, or by imprisonment in the county jail of the county in which the conviction is made, for a term not less than 30 days nor more than one year, and if a corporation by a fine of not less than \$25 nor more than \$500, and the costs of the prosecution shall follow in each case. [G. S. 1915, § 3818.]

§ 204. Repeal of acts in conflict herewith. All acts and parts of acts in conflict herewith are hereby repealed. [G. S. 1915, § 3819.]

CHAPTER 18.—FIRE PROTECTION.

§205. Buildings on which fire-escapes shall be provided; number, location, material and construction of escapes subject to authority having control of fire regulations in city or town; judgment of fire marshal or chief of fire department and state superintendent of inspection; buildings having cement walls, etc., and fire-proof roofs; elevators or warehouses; disputed matters to be submitted to state superintendent of inspection; decision final.

206. Duty of proprietor, custodian, etc., to post notices designating places where fire-escapes are located and may be found.

207. Public halls, lodge halls, lyceums, theaters, etc., to be provided with stairways, hallways, etc.; regulations concerning doors, exits, aisles, seats, etc.

208. Unlawful to operate theater, picture show, etc., without proper system of ventilation; requirements.

209. Certain buildings mentioned in preceding section to be provided with artificial means of ventilation; requirements; construction of booths for moving-picture machines; electric wiring.

210. Fire chief, fire marshal, city marshal, etc., to inspect such theaters, picture shows, etc., and require compliance with provisions of act.

§211. Proprietor, lessee or manager of building to keep chemical fire-extinguisher or extinguishers on each floor of building; substitution of stand-pipe and hose; both may be required.

212. Duty of chief of fire department or other officers named to make inspections of buildings and report violations to county attorney; duty to prosecute.

213. Duty of chief of fire department to make semiannual report to state factory inspector, who shall be *ex officio* state superintendent of inspection; time of making reports; matters to be reported.

214. State factory inspector or deputies empowered to inspect buildings mentioned and require changes to conform to act.

215. Complaint to factory inspector of failure of officer to comply with act; investigation; complaint to be filed with county attorney.

216. Penalty for failure to comply with act; liability of owner, lessee, etc., failing to comply with act; liability of municipality for failure to enforce inspection herein provided.

217. Penalty for violation of act or failure to perform duty by chief of fire department, marshal or other officer.

218. Repeal of Laws of 1909, ch. 149, and acts in conflict herewith.

LAWS OF 1911, CH. 197, AS AMENDED BY LAWS OF 1915, CH. 273.

AN ACT to provide for better protection of the health and safety of people who assemble in public halls, public houses of entertainment, theaters and places of amusement, tenement houses, apartment houses, rooming houses, and other places, and regulating the same, and providing penalties for the violation thereof, and repealing chapter 149, Session Laws of 1909.

§ 205. Buildings on which fire-escapes shall be provided; number, location, material and construction of escapes subject to authority having control of fire regulations in city or town; judgment of fire marshal or chief of fire department and state superintendent of inspection; buildings having cement walls, etc., and fire-proof roofs; elevators or warehouses; disputed matters to be submitted to state superintendent of inspection; decision final. Every building now or hereafter used, in whole or in part, as a public building, public or private institution, business building, warehouse, grain elevator, office building, schoolhouse, church, theater, public hall, place of assemblage or place of public resort, lodge room, boarding, lodging, tenement-house, apartment-house or rooming-house, three or more stories in height, shall, within sixty days after the taking effect of this act, be provided with one or more metallic ladders or stair fire-escapes attached to the outside wall thereof, and extending from or suitably near the ground to the uppermost story thereof, with platforms of such shape and size and in such proximity to one or more windows of each story above the first as to render access to such ladders or stairs from each such story easy and safe; in all cases a metallic ladder, not less than eighteen inches between the sides, shall be made to extend from the topmost platform to at least three feet above the fire wall or roof; the number, location, material and construction of such escapes to be subject to the approval of the fire marshal, chief of the fire department, city or town marshal, or such other authority as may have the control of fire regulations in any city or town where such buildings are located: *Provided, however,* That all buildings more than two stories in height used for manufacturing purposes, dormitories, schools, seminaries, hospitals, offices or asylums, shall have at least one such fire-escape for every thirty persons or fraction thereof for which working, sleeping or living accommodations are provided above the second story of said building, if in the judgment of the fire marshal or chief of the fire department and the state superintendent of inspection, such number is necessary: *Provided,* That in the case of all buildings having cement walls, floors, stairways, partitions and fire-proof roofs, the fire chief or fire marshal shall designate and approve the number, kind, location, material and construction of fire-escapes if in his judgment the same are required, having due regard for the inflammability of the nature of contents of said building and the number of people employed or residing therein, or occupying same: *Provided, however,* That the provisions of this act shall not apply to elevators or warehouses used for the storing or handling of grain of less than fifty thousand bushels capacity, nor shall the provisions hereof apply to elevators or warehouses used for the storing or handling of grain made entirely from steel or concrete, or of steel and concrete construction. In all cases of dispute arising in the enforcement of the provisions of this chapter, the fire marshal or chief of the fire department may if in his judgment he deems it necessary refer such disputed matters arising in the enforcement of this chapter to the state superintendent of inspection, as provided in this act, whose decision in the matter shall be final. [G. S. 1915, § 4859.]

State factory inspector is *ex officio* superintendent of inspection, see § 213, *post*.

§ 206. Duty of proprietor, custodian, etc., to post notices designating places where fire-escapes are located and may be found. It shall be the duty of every proprietor, custodian, superintendent or person or persons having the charge and control of such buildings mentioned in this chapter to post notices under the direction of the fire marshal or chief of the fire department in rooms and halls or in public and conspicuous places in such building, and designating the place on each and every floor of such building where such metallic ladders or fire-escapes are located and may be found. [G. S. 1915, § 4860.]

§ 207. Public halls, lodge halls, lyceums, theaters, etc., to be provided with stairways, hallways, etc.; regulations concerning doors, exits, aisles, seats, etc. All public halls, lodge halls, lyceums, theaters, opera-houses and all places of amusement which are thrown open to be used for the profits (by rentals or admission charges) of their owners or proprietors as a place of assemblage in the state of Kansas, shall be provided by the owner, manager or lessee with at least two stairways, hallways or means of egress, and all doors opening thereto shall not be less than three feet in width, and shall swing or open out of, not into, said public hall, lyceum, theater, opera-house or other place of amusement, and all exit doors in the building named in this section shall at all times be kept unlocked during a performance or entertainment within the building; over each exit doorway, and at the head of each stairway, there shall be placed a gas light, or an electric light, enclosed in a red glass box, or globe, with the words thereon, in large and distinct letters, "fire exit"; every such public hall, lodge hall, lyceum, theater, opera-house or place of amusement shall have at least two aisles or passage-ways, aisles having seats on both sides of same, shall be not less than three feet wide; aisles having seats on one side only, shall be not less than two feet and six inches wide; no seat shall have more than six seats intervening between it and an aisle, on either side; all seats in theaters and permanent places of amusement shall be securely fastened to floor; no stool or seat shall be placed in any aisle. [G. S. 1915, § 4861.]

§ 208. Unlawful to operate theater, picture show, etc., without proper system of ventilation; requirements. It shall be unlawful for the owner, proprietor, or lessee to operate any theater, picture show or place of amusement in any structure, room or place in the state of Kansas, which structure, room or place is capable of containing 50 or more persons unless the system of ventilation is capable of supplying at least thirty cubic feet of fresh air per minute for each person therein. [G. S. 1915, § 4862.]

§ 209. Certain buildings mentioned in preceding section to be provided with artificial means of ventilation; requirements; construction of booths for moving-picture machines; electric wiring. All such structures, rooms or places used for the purpose mentioned in section 4 of this act having less than 500 cubic feet of air space for each person and all rooms having less than 2000 cubic feet of air space for each person in which the outside window and door area, used for ventilation, is less than one-eighth of the floor area shall be provided with a draught fan or other artificial means of ventilation installed so as to force the stagnant air outward from said structure, room or place. In the end of the room opposite said fan, an inlet ventilator shall be provided of sufficient size to admit the required amount of fresh air as provided in section 4 of this act. All

booths used for moving picture machines shall be made of galvanized sheet iron of not less than 20 B. W. gage, or $\frac{1}{4}$ -inch hard asbestos board, securely riveted or bolted to angle iron frame, (of not less than $1 \times 1 \times \frac{1}{4}$ -inch angle iron, properly braced) or equivalent fire resisting material. A not less than 6 inch diameter ventilating pipe shall be used as an exhaust for the hot air generated in operating the machine. All electric wiring shall be in accordance with the national electrical code. [G. S. 1915, § 4863.]

"Section 4 of this act," mentioned herein, is § 208, *supra*.

§ 210. Fire chief, fire marshal, city marshal, etc., to inspect such theaters, picture shows, etc., and require compliance with provisions of act. It shall be the duty of the fire chief or fire marshal, city or town marshal in each city where such theater, picture show or place of amusement is operated, to inspect such places and to require such alterations or changes as he may deem necessary in securing a compliance with the provisions of this act. [G. S. 1915, § 4864.]

§ 211. Proprietor, lessee or manager of building to keep chemical fire-extinguisher or extinguishers on each floor of building; substitution of stand-pipe and hose; both may be required. The proprietor, lessee or manager of any of the buildings mentioned in this act shall at all times keep on each floor of said building one or more chemical fire-extinguishers, properly charged and in good working order, as the fire marshal or chief of the fire department may direct, the same to be hung in a conspicuous place and easy of access to the occupants thereof: *Provided*, That with the approval of the fire marshal or chief of the fire department, a stand-pipe and hose of proper size may be accepted in lieu of such extinguishers, or if in his judgment both are necessary, he may require the same. [G. S. 1915, § 4865.]

§ 212. Duty of chief of fire department or other officers named to make inspections of buildings and report violations to county attorney; duty to prosecute. It shall be the duty of the chief of the fire department or other officers named in section 1 of this act to visit all of the buildings contemplated in this act at least once every six months and carefully inspect such building, and report at once to the county attorney any failure to comply with or violation of any of the provisions of this act. It shall be the duty of the county attorney to at once proceed to prosecute all violators of any of the provisions of this act. [G. S. 1915, § 4866.]

"Section 1 of this act," mentioned herein, is, as amended, § 205, *supra*.

§ 213. Duty of chief of fire department to make semiannual report to state factory inspector, who shall be *ex officio* state superintendent of inspection; time of making reports; matters to be reported. It shall be the duty of the chief of the fire department, or any other officer named in this act, or any person or persons deputized to enforce the provisions of this act, to make a report semiannually, in writing, to the state factory inspector, who shall be *ex officio* state superintendent of inspection; such reports to be made in April and October of each year and to contain a full and correct statement of the conditions of all the buildings built or under course of construction in his jurisdiction that come within the meaning of this act. [G. S. 1915, § 4867.]

§ 214. State factory inspector or deputies empowered to inspect buildings mentioned and require changes to conform to act. The state factory

inspector is hereby empowered to enter upon and inspect, or cause to be entered upon and inspected by his deputy, any building mentioned in this act, and require such changes or alterations as he may deem necessary to conform to the provisions of this act. [G. S. 1915, § 4868.]

§ 215. Complaint to factory inspector of failure of officer to comply with act; investigation; complaint to be filed with county attorney. Should complaint be made to the said state factory inspector by any citizen of the state of the failure of any of the above-named officers to comply with any of the provisions of this act, the state factory inspector shall at once proceed to investigate such complaint, and if sufficient evidence can be obtained he shall at once file a complaint against such officer with the county attorney, who shall prosecute the same under the provisions of this act. [G. S. 1915, § 4869.]

§ 216. Penalty for failure to comply with act; liability of owner, lessee, etc., failing to comply with act; liability of municipality for failure to enforce police inspection herein provided. Any person, company or corporation who shall fail, neglect or refuse to comply with the provisions of this act within sixty days after it becomes a law shall be deemed guilty of a misdemeanor, and shall be subject to a fine of ten dollars per day for every day any such person, company or corporation shall continue in such failure, neglect or refusal. The owner, lessee or proprietor of any building herein mentioned who shall fail, neglect or refuse to provide the fire-escapes herein provided for shall be liable for all damages sustained by any person by reason of the failure to provide such fire-escapes; and any municipality which shall fail, refuse or neglect to enforce the police inspection of such fire-escapes, as herein provided, shall be liable for all damages so sustained by any person by reason thereof. [G. S. 1915, § 4870.]

§ 217. Penalty for violation of act or failure to perform duty by chief of fire department, marshal or other officer. Any chief of a fire department, marshal, or other officer, as contemplated by section 1 of this act, who fails or refuses to perform his duty as defined by the provisions of this act, or who shall fail or refuse to comply with any of the requirements thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined not less than ten dollars nor more than one hundred dollars. [G. S. 1915, § 4871.]

§ 218. Repeal of Laws of 1909, ch. 149, and acts in conflict herewith. Chapter 149, Session Laws of 1909, and all acts or parts of acts in conflict herewith are hereby repealed. [G. S. 1915, § 4872.]

CHAPTER 19.—FREE EMPLOYMENT BUREAU AND FREE EMPLOYMENT AGENCIES.*

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| <p>§219. Free employment bureau created; free agencies in cities of first and second class; city of second class may dispense with agency; appointment and compensation of "director of free employment."</p> <p>220. Director to prepare rules and regulations, forms, blanks, blank books, etc., and forward same to clerks of cities of first and second classes; printing of such blanks, etc.</p> <p>221. Establishment of agencies by mayor and council of such cities; duties devolve upon city clerk where no other agency established.</p> <p>222. Duties of free employment agent; registration of person desiring to employ any person and of person desiring employment; reports; notification to persons registered of employment open.</p> | <p>§223. Reports of such agencies made to director of free employment; persons not having received employment to be notified by director where employment may be had; annual report of such director.</p> <p>224. Removal of city clerk from office of free employment officer for failure or refusal to perform duties, etc.; removal of agent appointed by city to conduct free employment agency; mayor fill vacancy.</p> <p>225. Director of free employment to keep and maintain an office; executive council to provide room, etc.</p> <p>226. Director to prepare list of number of extra harvest hands needed in any community purposes.</p> <p>227. Compensation of director of free employment; allowance for postage and express.</p> |
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LAWS OF 1901, CH. 185.

AN ACT for the establishment, maintenance and conduct of a free employment bureau and free employment agencies, and relating thereto.

§ 219. Free employment bureau created; free agencies in cities of first and second class; city of second class may dispense with agency; appointment and compensation of "director of free employment." There is hereby created the free employment bureau of the state of Kansas, for the purpose of providing free employment agencies in all cities of the first and second class within the state: *Provided*, That any city of the second class may, by resolution of the mayor and council, dispense with such free employment agency, and shall notify the director to that effect. Said bureau shall be under the supervision and direction of an officer designated as "director of free employment," who shall be appointed by the governor within ten days from the taking effect of this act, and shall hold such office for the term of two years and until his successor is appointed and qualified. Before entering upon the duties of the office, he shall take and subscribe an oath as provided for other state officers. [G. S. 1915, § 5849.]

The commissioner of labor and industry was, by Laws of 1913, ch. 217, made *ex officio* director of the free employment bureau (§ 165, *ante*). The commissioner is authorized to appoint a free employment bureau clerk (§ 166, *ante*).

§ 220. Director to prepare rules and regulations, forms, blanks, blank books, etc., and forward same to clerks of cities of first and second classes; printing of such blanks, etc. As soon as such director of free employment shall have been appointed and qualified, it shall be his duty to prepare, prescribe, print, and transmit to the city clerks of all cities of the first and second classes, directions, rules and regulations for the opening, conduct and reports of free employment agencies in said cities, which directions, rules and regulations said director may amend, add to or revise from time to time. Said director shall also prepare all needful or proper forms to be used by such agencies, and shall cause blanks and all blank books to be prepared by the state printer, and shall forward supplies

* See, also, ch. 16, *Employment Offices and Agencies*.

thereof to all such city clerks for use of such agencies; all work authorized by this act to be done by the state printer, upon the requisition of said director, subject to the approval of the state printing committee. [G. S. 1915, § 5850.]

See note to § 219, *supra*.

§ 221. Establishment of agencies by mayor and council of such cities; duties devolve upon city clerk where no other agency established. Within thirty days after such directions, rules and regulations shall have been received by any city clerk, the mayor and council shall comply with the directions of said director as to the opening and preparing to maintain a free employment agency and for the expense thereof; and if no such provision be made, the duties of free employment agent shall devolve upon the city clerk, who shall perform the same, and his office shall be the free employment agency of said city. [G. S. 1915, § 5851.]

§ 222. Duties of free employment agent; registration of person desiring to employ any person and of person desiring employment; reports; notification to persons registered of employment open. It shall be the duty of the free employment agent of every city to register, as directed by the directions of the director of free employment, every person desiring to employ any person and every person desiring employment; and it shall be the strict legal right of every such person to so register and to enjoy all of the advantages of such employment agency free from any charge or expense whatever. Reports to the director of free employment shall be made by such agencies as often and as to such matters as he may require. Every person shall be notified of employment open in the order of his or her registration for that employment by such agent where registered. All other details shall be fixed by the director of free employment. [G. S. 1915, § 5852.]

See note to § 219, *supra*.

§ 223. Reports of such agencies made to director of free employment; persons not having received employment to be notified by director where employment may be had; annual report of such director. The reports of such agencies shall be made to the director of free employment as he may require, and shall be tabulated and classified, and such persons as have not secured employment or notice of employment where registered shall be notified by the director where such employment may be had, as shown by the reports made. The director shall embody in his annual report such tabulations of the work performed by such agencies in the state, with such recommendations as he may deem proper for the information of the legislature. [G. S. 1915, § 5853.]

See note to § 219, *supra*.

§ 224. Removal of city clerk from office of free employment officer for failure or refusal to perform duties, etc.; removal of agent appointed by city to conduct free employment agency; mayor fill vacancy. If any city clerk shall fail or refuse to carry out in good faith, in a reasonably fair and efficient manner, the duties devolved upon him by this act or by the direction, rules and regulations of the director of free employment, he shall forfeit his office as such free employment officer, and be removed therefrom: *Provided*, Such removal shall not affect the tenure of his office as to its other duties. Any agent provided for and appointed by any city to conduct a free employment agency under this act shall be removed by the mayor at any when requested in writing by ten or more electors

of said city, upon a showing being made that such agent refused or failed to perform the duties as required by this act. In case of the removal or resignation for any cause of the free employment agent in any city, the mayor of such city shall immediately appoint a qualified person to fill such vacancy. [G. S. 1915, § 5854.]

See note to § 219, *supra*.

§ 225. Director of free employment to keep and maintain an office; executive council to provide room, etc. The director of free employment shall keep and maintain an office, and the executive council is hereby directed to provide for said director a suitable room, properly furnished for the use of said director. [G. S. 1915, § 5855.]

See note to § 219, *supra*.

§ 226. Director to prepare list of number of extra harvest hands needed in any community; purposes. It shall be the further duty of the said director to secure and list, as far as practicable, from the rural districts of the state, the number of extra laborers required for the harvest season in each community, for the purpose of providing labor for the harvest season to meet such demand, and to provide employment for any idle labor seeking employment. [G. S. 1915, § 5856.]

See note to § 219, *supra*.

§ 227. Compensation of director of free employment; allowance for postage and express. The director of free employment shall be paid a salary of twelve hundred dollars per annum, to be paid as other state officers. The further sum of five hundred dollars annually for postage and express is hereby allowed for the use of said director in carrying out the provisions of this act. [G. S. 1915, § 5857.]

For salary of free employment bureau clerk, see § 168, *ante*.

CHAPTER 20.—HOLIDAYS.*

§ 228. Memorial day a legal holiday.

229. Labor day a legal holiday.

230. Washington's birthday a legal holiday.

231. Lincoln's birthday a legal holiday.

§ 232. Columbus day a legal holiday; act not to affect commercial paper, etc., or to interfere with judicial proceedings.

LAWS OF 1886, CH. 125.

§ 228. Memorial day a legal holiday. That the thirtieth day of May of each year shall be and the same is hereby declared to be a legal holiday. [G. S. 1915, § 5076.]

LAWS OF 1891, CH. 145.

§ 229. Labor day a legal holiday. That the first Monday of September of each year shall be known as labor day, and the same is hereby declared to be a legal holiday. [G. S. 1915, § 5077.]

* The days named in this chapter are the only holidays specially declared to be legal holidays by separate enactments for that purpose. However, the negotiable-instruments law names certain days, in addition to those named in this chapter, which are declared to be legal holidays for the purpose of that act and which are by custom more or less generally observed as holidays; the days named (in addition to those named in this chapter) are, "(1) the first day of January, known as New Year's day; . . . (4) the 4th day of July, known as Independence day; . . . (6) the 25th day of December, known as Christmas day; (7) any day appointed and recommended by the governor of this state, or the President of the United States, as a day of fast or thanksgiving. . . . If any of said days be the first day of the week, known as Sunday, the next succeeding secular or business day shall be a holiday." [G. S. 1915, § 6719.]

LAWS OF 1895, CH. 161.

§ 230. Washington's birthday a legal holiday. That the 22d day of February of each year shall be and the same is hereby declared a legal holiday. [G. S. 1915, § 5078.]

LAWS OF 1907, CH. 245.

§ 231. Lincoln's birthday a legal holiday. That the 12th day of February, the anniversary of the birth of Abraham Lincoln, be and the same is hereby declared a legal holiday. [G. S. 1915, § 5079.]

This act contains no provision as to when it shall take effect, as required by art. 2, § 19 of the constitution.

LAWS OF 1911, CH. 201.

AN ACT designating the 12th day of October in each year as a public holiday to be known as "Columbus day."

§ 232. Columbus day a legal holiday; act not to affect commercial paper, etc., or to interfere with judicial proceedings. The 12th day of October of the present year of our Lord 1911, and the 12th day of October of each year thereafter, is hereby declared a public holiday, to be known as "Columbus day" and the same shall be recognized, classed and treated as other legal holidays under the laws of this state: *Provided*, That this act shall not be construed to affect commercial paper, the making or execution of agreements or instruments in writing or interfere with judicial proceedings. [G. S. 1915, § 5080.]

CHAPTER 21.—INDUSTRIAL WELFARE COMMISSION.*

§233. Exercise of police and sovereign power of state over wages, hours and conditions of labor of women, learners and apprentices, and minors.

234. Unlawful to employ women, learners, and apprentices and minors in industry or occupation under conditions detrimental to health, etc., at wages not adequate for maintenance or for more hours than is consonant with health, etc.; exceptions.

235. Industrial welfare commission created; commissioner of labor and two others constitute commission; one member to be a woman; appointment of members; qualifications; term of office; removal; vacancies; officers and employees of commission; quorum; persons related by blood or marriage to officers and persons specified not to be appointed.

236. Members of commission to be paid traveling and other necessary expenses; serve without salary; office in state house.

237. Investigation by commission of wages, hours or labor conditions; request of persons employed in occupations; power and authority of commission in making investigation.

§238. Employers of women, learners and apprentices, and minors to keep register of persons employed; inspection of register by commission, etc.

239. Commission may hold public hearings for purpose of investigation; persons may appear and give testimony; subpoena witnesses; oaths; production of records, etc.; findings and report; order of commission; compensation of witnesses for travel and attendance.

240. Commission may establish a wage, hour or sanitary board after investigation of any occupation; members of board; rules and regulations governing selection of members of board and modes of procedure of board; jurisdiction of commission; compensation of members of board.

241. Commission to transmit information to board; duties of board in determining minimum wage required to supply cost of living and number of hours and sanitary conditions; different minima hours and standards for different localities; determination of majority of board to be reported to commission with reasons and facts.

* The commission is authorized to make certain orders concerning wages, hours and sanitary conditions affecting women, learners and apprentices, and minors in any occupation. These orders may be changed from time to time. Copies of the orders, etc., in effect, concerning any occupation may be obtained by writing to the "Industrial Welfare Commission, Topeka, Kan."

- §242. Action of commission on report of board; notice of public hearing; order to be made by commission effective in sixty days; commission to mail copy of order to employers; posting of order.
243. Commission may reopen question of wages, hours, or conditions of labor and reconvene former board or call a new one; determinations of board.
244. Commission may issue special license to employees who are physically defective or crippled, etc., authorizing employment of such persons for less number of hours, etc.
245. Definition of terms used in this act; "occupation"; "learners" and "apprentices"; separate inquiry and report on any branch of occupation; separate order; "minor"; "women"; definitions of "learner" and "apprentice"; rules and regulations.
246. Employer, employee, etc., may bring action to vacate and set aside order, ruling or holding; time for bringing action; burden of proof; attorney-general to appear for commission; action advanced over other actions; appeal from district court; orders, etc., in effect pending appeal; service on board.
- §247. Violation of act a misdemeanor; penalty.
248. Penalty for discharge of employee or discrimination against employee because of signing a request for investigation of wages, etc., or because of such person testifying, etc.
249. Penalty for employment of woman, or minor, or learner, or apprentice at less than minimum wage, for greater number of hours, etc., than fixed by commission; recovery in civil action of minimum wage, for overtime, etc., regardless of agreement; costs and attorney's fees.
250. Commission to investigate whether employers or employees are complying with orders, etc.; prosecution of persons not complying with orders.
251. Commissioner of labor and inspectors of bureau of labor to give information and statistics to commission and assist commission in carrying out act.
252. Commission to make biennial report to the governor and the legislature; printing and distribution of report.
253. Act construed as supplemental to existing laws.

LAWS OF 1915, CH. 275.

AN ACT to establish an industrial welfare commission for women, learners and apprentices, and minors, prescribing its powers and duties and providing for the fixing of wages, hours and the standard conditions of labor for such workers; providing penalties for violations of the same.

§ 233. Exercise of police and sovereign power of state over wages, hours and conditions of labor of women, learners and apprentices, and minors. That the state of Kansas exercising herewith its police and sovereign power declares that inadequate wages, long-continued hours and unsanitary conditions of labor, exercise a pernicious effect on the health and welfare of women, learners and apprentices, and minors. [G. S. 1915, § 10495.]

Period of minority in males and females, § 84, *ante*.
 "Minor," as used in this act, defined, § 245, *post*.

§ 234. Unlawful to employ women, learners, and apprentices and minors in industry or occupation under conditions detrimental to health, etc., at wages not adequate for maintenance or for more hours than is consonant with health, etc.; exceptions. That it shall be unlawful to employ women, learners, and apprentices and minors in any industry or occupation within the state of Kansas under conditions of labor detrimental to their health or welfare and it shall be unlawful to employ women, learners, and apprentices and minors in any industry within the state of Kansas at wages which are not adequate for their maintenance and for more hours in any one day than is consonant with their health and welfare, except as hereinafter provided. [G. S. 1915, § 10496.]

§ 235. Industrial welfare commission created; commissioner of labor and two others constitute commission; one member to be a woman; appointment of members; qualifications; term of office; removal; vacancies; officers and employees of commission; quorum; persons related by blood or marriage to officers and persons specified not to be appointed. That

there is hereby created a commission to be known as the industrial welfare commission for the state of Kansas to establish such standard of wages, hours, and conditions of labor for women, learners and apprentices, and minors employed within this state as shall be held hereunder to be reasonable and not detrimental to health and welfare. This commission shall consist of the commissioner of labor and two others appointed by the governor. No two of whom shall be from any one congressional district. At least one member of this commission shall be a woman. The first appointment shall be made within sixty days after the passage of this act. One member shall be appointed to serve until January 1, 1917, a second to serve until January 1, 1918. Thereafter each member shall be appointed for a term of four years and until his successor is appointed and qualifies. The governor shall have the power of removal for cause. Any vacancy that may occur shall be filled in like manner for the unexpired portion of the term. The commission shall have power to elect its own chairman, a secretary, and such other employees as it may require. Two members of the commission shall constitute a quorum at all regular meetings: *Provided*, That no person shall be appointed on such commission, who is related by blood or marriage to the commissioner of labor, or to any state officer, or to any member of any other state board or commission. And no person shall be appointed to any place or position on said commission or be employed by such commission in any way, who is related by blood or marriage to any member thereof, or to any of its chief officers or heads of departments. [G. S. 1915, § 10497.]

§ 236. Members of commission to be paid traveling and other necessary expenses; serve without salary; office in state house. That each member of the commission shall be paid all traveling and other necessary expenses incurred in the performance of his or her official duties, but shall serve without salary. The commission may incur other necessary expenses not exceeding the appropriation therefor and shall be provided with an office in the state house. [G. S. 1915, § 10498.]

§ 237. Investigation by commission of wages, hours or labor conditions; request of persons employed in occupations; power and authority of commission in making investigation. That the commission may at its discretion investigate wages, hours and sanitary and other conditions affecting women, learners and apprentices and minors in any industry or occupation in the state. Upon the request of not less than twenty-five persons engaged in any occupation in which women, learners and apprentices and minors are employed, it shall become the duty of the commission to make such investigation as is herein provided. To this end, said commission shall have full power and authority to call for statements and to examine, either through its members or other authorized representatives, all pay-rolls or other wage records of all persons, firms or corporations employing women, learners and apprentices and minors as to any matter that would have a bearing upon the question of wages, hours, or labor conditions of such employees. [G. S. 1915, § 10499.]

§ 238. Employers of women, learners and apprentices, and minors to keep register of persons employed; inspection of register by commission, etc. That every employer of women or of learners and apprentices, or of minors shall keep a register of all such persons employed by him in such form as the commission shall prescribe; and every such employer shall on request permit the commission, or any of its members, or agents to inspect such register. [G. S. 1915, § 10500.]

§ 239. Commission may hold public hearings for purpose of investigation; persons may appear and give testimony; subpoena witnesses; oaths; production of records, etc.; findings and report; order of commission; compensation of witnesses for travel and attendance. That the commission may hold public hearings at such times and places as it deems fit and proper for the purpose of investigating any matters it is authorized to investigate by this act. At any such public hearings, any employee, or employer or other interested person may appear and give testimony as to wages, hours, sanitation and other pertinent conditions of the occupation or industry under investigation. The commission or any member thereof shall have power to subpoena witnesses, to administer oaths, to compel the production of all wage records, papers, and other evidence, and to make findings and report such findings to the commission; but no order shall be made by less than a majority of the commission. Witnesses subpoenaed by the commission may be allowed such compensation for travel and attendance as the commission may deem reasonable, to an amount not exceeding the usual mileage and per diem allowed by statute to witnesses in civil cases in the district court. [G. S. 1915, § 10501.]

§ 240. Commission may establish a wage, hour or sanitary board after investigation of any occupation; members of board; rules and regulations governing selection of members of board and modes of procedure of board; jurisdiction of commission; compensation of members of board. That if after investigation the commission is of the opinion that in any occupation the wages, hours and conditions, sanitary and otherwise, are prejudicial to the health or welfare of any substantial number of the classes of employees named in this act and are inadequate to supply the necessary cost of living and to maintain the worker in health it shall establish a wage, hour or sanitary board as the conditions developed may demand, which shall hereinafter be described as the "board" consisting of not less than three representatives of employers in the occupation in question, of an equal number of persons to represent the employees in the occupation in question, and of one or more disinterested persons appointed by the commission to represent the public, and shall make rules and regulations governing the selection of members and the modes of procedure of the board, and shall exercise exclusive jurisdiction over all questions arising with reference to the validity of the procedure and of the determinations of the board. The members of the board shall be compensated at the same rate as jurors in civil cases in the district court, and they shall be allowed the necessary traveling and clerical expenses incurred in the performance of their duties. [G. S. 1915, § 10502.]

§ 241. Commission to transmit information to board; duties of board in determining minimum wage required to supply cost of living and number of hours and sanitary conditions; different minima hours and standards for different localities; determination of majority of board to be reported to commission with reasons and facts. That the commission may transmit to each board all pertinent information in its possession relative to the wages, hours and sanitary conditions of the occupation in question. Each board shall endeavor to determine the minimum wage, whether by time-rate or piece-rate, required in the case of a woman worker of ordinary ability in the occupation in question to supply the necessary cost of living and the number of hours and other sanitary conditions necessary to maintain her health, and suitable minimum wages, hours, and sanitary conditions for learners and apprentices, and minors: *Provided, however,*

That such board may recommend different minima hours and standards for each class in an occupation of different localities in the state, when, in the judgment of said board, the different conditions obtaining justify such action. When a majority of the members of a board shall agree upon minimum wage, standard of hours, or sanitary determinations, they shall report such determinations to the commission, together with the reasons therefor and the facts relating thereto. [G. S. 1915, § 10503.]

§ 242. Action of commission on report of board; notice of public hearing; order to be made by commission effective in sixty days; commission to mail copy of order to employers; posting of order. That upon receipt of the report of the determinations of a board, the commission shall consider and review the same; and it may approve any or all of such determinations or disapprove any or all of them; and it may resubmit to the same board, or a new board, any subject covered by any determinations so disapproved. If the commission approves any determination contained in a report from a board, it shall publish a notice, not less than once a week for four successive weeks in the official state paper, that it will on a date and at a place named in said notice, hold a public meeting at which all persons in favor of or opposed to said recommendations will be given a hearing; and, after said publication of said notice and said meeting, the commission may, in its discretion, make and render such an order as may be proper or necessary to adopt such determinations and carry the same into effect, and require all employers in the occupation affected thereby to observe and comply with such determinations and said order. Said order shall become effective in sixty days after it is made and rendered and shall be in full force and effect on and after the sixtieth day following its making and rendition. The commission shall, in so far as it is practicable, mail a copy of any such order to every employer affected thereby; and every employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room in his establishment. [G. S. 1915, § 10504.]

§ 243. Commission may reopen question of wages, hours, or conditions of labor and reconvene former board or call a new one; determinations of board. That whenever wages, hours, or conditions of labor have been made mandatory in any occupation, upon petition of either employers or employees, the commission may at its discretion reopen the question and reconvene the former board or call a new one, and any determinations made by such board shall be dealt with in the same manner as were the original determinations. [G. S. 1915, § 10505.]

§ 244. Commission may issue special license to employees who are physically defective or crippled, etc., authorizing employment of such persons for less number of hours, etc. That for any occupation in which only a minimum time wage has been established, the commission may issue to an employee physically defective or crippled, or of less than ordinary ability, or learners, apprentices and minors a special license authorizing the employment of such person at a wage and for a number of hours less than that fixed by said commission to be stated in said license. [G. S. 1915, § 10506.]

§ 245. Definition of terms used in this act; "occupation"; "learners" and "apprentices"; separate inquiry into and report on any branch of occupation; separate order; "minor"; "women"; definitions of "learner" and "apprentice"; rules and regulations. That the word "occupation" as

used in this act shall be so construed as to include any and every vocation and pursuit and trade and industry. The words "learners" and "apprentices" shall include only such learners and apprentices as are minors or are women. Any board may make a separate inquiry into and report on any branch of any occupation; and the commission may make a separate order affecting any branch of any occupation. A "minor" shall mean a person, male or female, under eighteen years of age. A "women" [woman] shall mean any female eighteen years of age and over. Any board may include in its determinations definitions of "learner" and "apprentice" and the commission shall have power to make such rules and regulations and to issue such orders relating to the same as it deems necessary to make effective the object of this act. [G. S. 1915, § 10507.]

§ 246. Employer, employee, etc., may bring action to vacate and set aside order, ruling or holding; time for bringing action; burden of proof; attorney-general to appear for commission; action advanced over other actions; appeal from district court; orders, etc., in effect pending appeal; service on member of board. Any employer or employee or other person who shall be interested therein, who shall be dissatisfied with any order, ruling or holding of the commission may, within thirty days from the making thereof, commence an action in the district court of Shawnee county or in the district court in the county in which the person so complaining shall reside or have his principal place of business against the industrial welfare commission, as defendant, to vacate and set aside such order, ruling or holding on the ground that the same is unauthorized by law, confiscatory or unreasonable, and in any such action all determinations of questions of fact which shall have been made by the commission under the foregoing provisions of this act shall be presumed to be correct and the burden of proof shall be upon the plaintiff to show the incorrectness of such determinations. In all such actions, the attorney-general shall appear for and represent such commission. All such actions shall have preference in any court and on motion shall be advanced over any civil cause of a different nature pending in such court and such actions shall be tried and determined as other civil actions. Appeal from any decision of the district court may be taken from the district court to the supreme court in the same manner as provided by law in other civil actions and shall have precedence in the supreme court over civil cases of a different nature. During the pendency of any such action the orders, rulings and holdings complained of shall, unless temporarily stayed or enjoined by the court, remain in full force and effect until final judgment. Service of summons on any member of the board shall be sufficient service on the board. [G. S. 1915, § 10508.]

§ 247. Violation of act a misdemeanor; penalty. That a violation of any provision of this act shall constitute a misdemeanor, and any one convicted thereof shall be punished by a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars for each such misdemeanor. [G. S. 1915, § 10509.]

§ 248. Penalty for discharge of employee or discrimination against employee because of signing a request for investigation of wages, etc., or because of such person testifying, etc. That any employer who discharges, or in any other manner discriminates against any employee because such employee has signed or agreed to sign any request to the commission to investigate wages, hours, or sanitary, or other labor con-

ditions, or has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings or sign any request relative to the enforcement of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25) dollars nor more than one hundred (\$100) dollars for each such misdemeanor. [G. S. 1915, § 10510.]

§ 249. Penalty for employment of woman, or minor, learner or apprentice at less than minimum wage, for greater number of hours, etc., than fixed by commission; recovery in civil action of minimum wage, for overtime, etc., regardless of agreement; costs and attorney's fees. That any employer who employs any woman, or minor, learner or apprentice in any occupation at less than the minimum wage or for a greater number of hours in a day or week fixed or under sanitary or other conditions forbidden by order or license issued by the commission, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25) dollars nor more than one hundred (\$100) dollars for each such misdemeanor. Any woman or minor or learner or apprentice who shall receive less than the minimum wage or shall be compelled to work for a greater number of hours than that fixed by order or license issued by the commission, shall be entitled to recover in a civil action the full amount of the legal minimum wage, and compensation at the same rate for the number of hours of overtime work as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage or greater number of hours. In such action, however, the employer shall be credited with any wages which have been paid on account. [G. S. 1915, § 10511.]

§ 250. Commission to investigate whether employers or employees are complying with orders, etc.; prosecution of persons not complying with orders. That the commission shall, from time to time, investigate and ascertain whether or not employers or employees in the state of Kansas are observing and complying with its orders and take such steps as may be necessary to have prosecuted such employers and employees as are not observing and complying with its orders. [G. S. 1915, § 10512.]

§ 251. Commissioner of labor and inspectors of bureau of labor to give information and statistics to commission and assist commission in carrying out act. That the commissioner of labor and the several inspectors of the bureau of labor shall, at any and all times, give to the commission any information or statistics in their respective offices that may assist said commission in carrying out this act and render such assistance to said commission as may not be inconsistent with the performance of their respective official duties. [G. S. 1915, § 10513.]

§ 252. Commission to make biennial report to the governor and the legislature; printing and distribution of report. That the commission shall biennially make a report to the governor and legislature of its investigations and proceedings, and such reports shall be printed and distributed as in the case of other executive documents. [G. S. 1915, § 10514.]

§ 253. Act construed as supplemental to existing laws. That this act is to be construed as supplemental to existing laws regulating the employment of women, learners and apprentices and minors. [G. S. 1915, § 10515.]

CHAPTER 22.—INJUNCTIONS IN LABOR CASES.

§254. Injunctions in cases involving employers, employees or persons seeking employment; notice and opportunity to be heard; service of notice and copy of pleadings; temporary restraining order without notice in certain cases; record to be made of such order; expiration of order; extension; reasons for extension entered of record.

255. Restraining order of interlocutory order of injunction not to issue except upon giving security; amount and conditions.

§256. Order of injunction or restraining order to set forth reasons for issuance of same; description of acts sought to be restrained without reference to petition, etc.; persons bound by such order.

257. Restraining order or injunction not to be granted in cases involving employers, employees or persons seeking employment unless necessary to prevent injury, etc.; sufficiency of application; verification; acts which shall not be prohibited by such restraining order or injunction.

LAWS OF 1913, CH. 233.

AN ACT concerning injunctions in certain cases, and regulating the issuance, terms and conditions of the same by the courts of the state of Kansas.

§ 254. Injunctions in cases involving employers, employees or persons seeking employment; notice and opportunity to be heard; service of notice and copy of pleadings; temporary restraining order without notice in certain cases; record to be made of such order; expiration of order; extension; reasons for extension entered of record. That no injunction whether interlocutory or permanent, in any case between any employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms, or conditions of employment shall be issued without previous notice, and an opportunity to be heard on behalf of the parties to be enjoined, which notice, together with a copy of the motion, petition or other pleading upon which the application for such injunction will be based, shall be served upon the parties sought to be enjoined a reasonable time in advance of such application. But if it shall appear to the satisfaction of the court or judge that immediate and irreparable injury is likely to ensue to the complainant, and that the giving of notice of the application or the delay incident thereto would probably permit the doing of the act sought to be restrained before notice could be served or hearing had thereon, the court or judge, may, in his discretion, issue a temporary restraining order without notice. Every such order shall be indorsed of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed for a like period, after notice to those previously served, if any, and for good cause shown, and the reasons for such extension shall be entered of record. [G. S. 1915, § 7146.]

§ 255. Restraining order or interlocutory order of injunction not to issue except upon giving of security; amount and conditions. That no restraining order or interlocutory order of injunction shall issue except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby. [G. S. 1915, § 7147.]

§ 256. Order of injunction or restraining order to set forth reasons for issuance of same; description of acts sought to be restrained without reference to petition, etc.; persons bound by such order. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the petition, motion or other document, the act or acts sought to be restrained; and shall be binding only upon the parties to the suit, their agents, servants, employees and attorneys, or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same. [G. S. 1915, § 7148.]

§ 257. Restraining order or injunction not to be granted in cases involving employers, employees or persons seeking employment unless necessary to prevent injury, etc.; sufficiency of application; verification; acts which shall not be prohibited by such restraining order or injunction. That no restraining order or injunction shall be granted by any court of the state of Kansas, or a judge or the judges thereof, in any case between an employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney. And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means to do so; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means to do so; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto. [G. S. 1915, § 7149.]

CHAPTER 23.—LIENS FOR LABOR.

- Article 1. Liens on Personal Property. §§ 258-266.
 2. Liens on Oil and Gas Leaseholds. §§ 267-270.
 3. Mechanics' Liens. §§ 271-281.
 4. Bond to Secure Payment of Claims.* §§ 282-284.

ARTICLE 1.—Liens on Personal Property.

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| <p>§258. Lien of mechanic, artisan or tradesman on personal property altered or repaired; sale of such property after six months; statement to be filed with register of deeds when property taken away without payment being made; contents of statement; lien on property; mechanic, etc., entitled to possession if claim not paid within six months; sale of property.</p> <p>259. Notice of sale of personal property; service of notice on owner; publication of notice; posting of notices when value of property does not exceed twenty dollars.</p> <p>260. Sales to be at public auction for cash.</p> <p>261. Proceeds of sale, after payment of charges and expenses, to be de-</p> | <p>posited with county treasurer if owner be absent.</p> <p>§262. Copies of notices, proof of publication, posting, etc., and affidavit of mechanic, etc., to be filed and kept in county clerk's office; certified copies presumptive evidence.</p> <p>263. Voluntary delivery of property deemed abandonment of lien; waiver by special contract.</p> <p>264. Lien of blacksmith, horseshoer, wagonmaker, keeper of garage, etc., on goods, chattels, horses, mules, wagon, buggies, automobiles, farm implements, etc., for services and materials in making repairs, etc.</p> <p>265. Lien to be filed for record with recorder of county within sixty days.</p> <p>266. Lien enforced and foreclosed as chattel mortgages.</p> |
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LAWS OF 1872, CH. 142, AS AMENDED BY LAWS OF 1903, CH. 383.

AN ACT to amend chapter 58, General Statutes, relating to liens upon personal property.

§ 258. Lien of mechanic, artisan or tradesman on personal property altered or repaired; sale of such property after six months; statement to be filed with register of deeds when property taken away without payment being made; contents of statement; lien on property; mechanic, etc., entitled to possession if claim not paid within six months; sale of property. Whenever any person shall intrust to any mechanic, artisan or tradesman materials to so construct, alter or repair any article of value, or any article of value to be altered or repaired, such mechanic, artisan or tradesman shall have a lien on such article, and, if the same be completed and not taken away, and his fair and reasonable or stipulated charges be not paid, may, after six months from the time such charges become due, sell the same; or, if the same be susceptible of division without injury, he may sell so much thereof as is necessary to pay such charges and the expenses of publication and sale, as hereinafter provided: *Provided*, That on the completion of said repairs or alteration, at the request of the owner of said property so intrusted, or of his duly authorized agent, the said mechanic, artisan or tradesman may permit the same to be taken away without having been paid for, and shall be entitled to retain his lien on said property as aforesaid, by filing in the office of the register of deeds of the county where said property was so altered or repaired, within three days after the said property is so taken away, a statement in writing, signed by the said mechanic, artisan, or tradesman, showing the name of the owner of the property, the name of the mechanic, artisan, or tradesman, the name of the article, the date of the charge for same, the amount due, and the said statement shall constitute a lien on the property

* For act requiring railroad company to take bond from contractor for protection of laborers, mechanics, and material-men, see §§ 431, 432, *post*.

from the time of filing the same until the amount of the charges for so altering or repairing the property shall be paid; and if the same be not paid within six months from the time of filing said statement, the mechanic, artisan or tradesman shall be entitled to the possession of the property, and after obtaining such possession may proceed to sell the same as hereinbefore mentioned. [G. S. 1915, § 6082.]

Civil engineer has lien on field-notes, maps, etc. Irrigation Co. v. Briesen, 1 K. A. 758. Lien not destroyed by agreement postponing payment for labor, etc. Olson v. Orr, 94 K. 38.

Compliance with statute; possession held not surrendered to owner. Olson v. Orr, 94 K. 38.

Work, etc., must be at owner's request or with consent. Olson v. Orr, 94 K. 38.

§ 259. Notice of sale of personal property; service of notice on owner; publication of notice; posting of notices when value of property does not exceed twenty dollars. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least twenty days' notice of such sale shall be given him in writing, either personally or by mail, or by leaving a notice in writing at his residence or place of doing business; but if the name and residence be not known, the person having the possession of such property shall cause a notice of the time and place of sale, and containing a description of the property, to be published at least once a week for the space of three weeks successively, in a newspaper, if there be one published in the county where such sale is advertised to take place; if there be no newspaper published in such county, then said notice shall be published in some newspaper of general circulation in such county. If the value of the property does not exceed twenty dollars, such notice may be given by written or printed handbills posted up in at least five public places in the township or city where the bailee resides or the sale is to take place, one of which shall be in a conspicuous part of the bailee's place of business. [G. S. 1915, § 6087.]

§ 260. Sales to be at public auction for cash. All sales under this act shall be at public auction, for cash. [G. S. 1915, § 6088.]

§ 261. Proceeds of sale, after payment of charges and expenses, to be deposited with county treasurer if owner be absent. The proceeds of such sale, after the payment of charges and the expenses of publication and sale, shall, if the owner be absent, be deposited with the treasurer of the county where the sale takes place by the person making such sale, he taking the treasurer's receipt therefor, and shall be subject to the order of the person legally entitled thereto. [G. S. 1915, § 6089.]

§ 262. Copies of notices, proof of publication, posting, etc., and affidavit of mechanic, etc., to be filed and kept in county clerk's office; certified copies presumptive evidence. Copies of the notices required by this act, and proof of the publication, posting or giving thereof, and an affidavit of the mechanic, artisan, tradesman, carrier or other bailee, or some competent agent or witness in his behalf, setting forth his claim and the actual expense of the publication and sale, shall be filed and kept in the county clerk's office of the county where the sale takes place, and the same or copies thereof duly certified by such clerk shall be received as presumptive evidence of the matters therein contained. [G. S. 1915, § 6090.]

§ 263. Voluntary delivery of property deemed abandonment of lien; waiver by special contract. The voluntary delivery to the owner or claimant of any personal property by any person claiming a lien thereon, as provided in this act, shall be held to be an abandonment of such lien, and such lien may also be waived by special contract. [G. S. 1915, § 6091.]

LAWS OF 1913, CH. 218, AS AMENDED BY LAWS OF 1917, CH. 232.

AN ACT creating a lien on personal property.

§ 264. Lien of blacksmith, horseshoer, wagonmaker, keeper of garage, etc., on goods, chattels, horses, mules, wagons, buggies, automobiles, farm implements, etc., for services and materials in making repairs, etc. That a first and prior lien is hereby created in favor of any blacksmith, horseshoer, wagonmaker, keeper of garage, or any other person upon any goods, chattels, horses, mules, wagons, buggies or other vehicles or automobiles and any farm implements of whatsoever kind, which shall have come into the possession of such blacksmith, horseshoer, wagonmaker, keeper of garage, or any other person for the purpose of having work on said property, or repairs, or improvements in anywise appertaining thereto, and said lien shall amount to the full amount and reasonable value of the services performed. And shall extend to, and include the reasonable value of all material used in the performance of such services. [G. S. 1915, § 6092, as amended by Laws 1917, ch. 232, § 1; March 12.]

§ 265. Lien to be filed for record with recorder of county within sixty days. That said lien shall be filed for record with the recorder of the county in which said services were rendered within sixty days thereafter. [G. S. 1915, § 6093.]

§ 266. Lien enforced and foreclosed as chattel mortgages. That said lien may be enforced and foreclosed as chattel mortgages are now enforced and foreclosed. [G. S. 1915, § 6094.]

ARTICLE 2.—Liens on Oil and Gas Leaseholds.

§267. Lien of contractor on gas and oil leasehold or pipe-line for labor and material; lien preferred to other liens.

268. Lien of subcontractor or material man, or artisan or day laborer in

employ of contractor, on gas and oil leasehold or pipe-line.

§269. Enforcement of lien for labor and material.

270. Repeal of acts in conflict herewith.

LAWS OF 1909, CH. 159.

AN ACT relating to liens for labor and materials furnished to owners of leaseholds for oil and gas purposes and for materials and labor for the construction of oil and gas pipe-lines.

§ 267. Lien of contractor on gas and oil leasehold or pipe-line for labor and material; lien preferred to other liens. Any person, corporation or copartnership who shall under contract, express or implied, with the owner of any leasehold for oil and gas purposes, or the owner of any gas pipe-line or oil pipe-line, or with the trustee or agent of such owner, who shall perform labor or furnish material, machinery and oil-well supplies used in the digging, drilling, torpedoing, completing, operating or repairing of any oil or gas well, or who shall furnish any oil-well supplies or perform any labor in constructing or putting together any of the machinery used in drilling, torpedoing, operating, completing or repairing of any gas well, shall have a lien upon the whole of such leasehold or oil pipe-line or gas pipe-line, or lease for oil and gas purposes, the building and appurtenances, and upon the material and supplies so furnished, and upon said oil and gas well for which they were furnished, and upon all the other oil wells, fixtures and appliances used in the operating for oil and gas purposes upon the leasehold for which said material and supplies were furnished and labor performed. Such lien shall be preferred to all other liens or incumbrances which may attach to or upon said leasehold

for gas and oil purposes and upon any oil pipe-line or gas pipe-line, or such oil and gas wells and the material and machinery so furnished and the leasehold for oil and gas purposes and the fixtures and appliances thereon subsequent to the commencement of or the furnishing or putting up of any such machinery or supplies. [G. S. 1915, § 4996.]

No lien on oil produced, for materials furnished in construction. *Black v. Giarth*, 88 K. 338.

§ 268. Lien of subcontractor or material man, or artisan or day laborer in employ of contractor, on gas and oil leasehold or pipe-line. Any person, copartnership or corporation who shall furnish such machinery or supplies to a subcontractor under a contractor, or any person who shall perform such labor under a subcontract with a contractor, or who as an artisan or day laborer in the employ of such contractor, and who shall perform any such labor, may obtain a lien upon said leasehold for oil and gas purposes or any gas pipe-line or any oil pipe-line from the same tank and in the same manner and to the same extent as the original contractor for the amount due him for such labor, as provided in section 1 of this act. [G. S. 1915, § 4997.]

§ 269. Enforcement of lien for labor and material. The liens herein created shall be enforced in the same manner, and notice of the same shall be given in the same manner, and the material-man's statement or the lien of any laborer herein mentioned shall be filed in the same manner as provided for in sections 2 and 3 of chapter 168, Session Laws of Kansas for the year 1899, and all actions brought for the purpose of enforcing any such liens shall be governed by article 27, chapter 80 of procedure civil, as provided in the General Laws of Kansas for the year 1901. [G. S. 1915, § 4998.]

"Sections 2 and 3 of chapter 168, Session Laws of Kansas for the year 1899," mentioned herein, relate to assignment of real-estate mortgages and not to the filing of statements for liens. Sections 2 and 3 of chapter 168, Session Laws of Kansas for the year 1889, however, do relate to the filing of lien statements, and are undoubtedly the statute which should have been referred to in the foregoing section. Said chapter 168 of the Laws of 1889 was printed as a part of chapter 80 of the General Statutes of 1901, which said chapter was repealed and superseded by chapter 182 of the Laws of 1909. Sections 7558 and 7559 of the General Statutes of 1915 contain the same general provisions as sections 2 and 3 of chapter 168 of the Laws of 1889.

"Article 27, chapter 80 of procedure civil, as provided in the General Laws of Kansas for the year 1901," mentioned in the foregoing section, relates to "liens of mechanics and others," the general provisions of which are continued in article 27, chapter 93 of the General Statutes of 1915. However, the matter contained in the General Statutes of 1915 in the article and chapter mentioned is a later enactment than that referred to in the General Statutes of 1901.

§ 270. Repeal of acts in conflict herewith. All acts and parts of acts in conflict with this act are hereby repealed. [G. S. 1915, § 4999.]

ARTICLE 3.—Mechanics' Liens.

§271. Persons entitled to mechanic's lien; lien upon whole piece or tract of land, the building and appurtenances; such liens preferred to other liens, etc., attaching subsequent to commencement of building, making of repairs, improvements, etc.

272. Claimant to file statement in office of clerk of district court; matters to be set forth in such statement; note given for labor or material; time for filing statements; entries to be made by clerk in mechanic's-lien docket.

§273. Subcontractor, artisan or laborer entitled to lien; statement to be filed; time for filing statement; service of notice on owner of land; amount of liability of owner; payments made to contractor within sixty days at owner's risk; owner not liable to action by contractor within sixty days; owner may pay subcontractor; credit for such payment; fee of clerk for entering statements.

- §274. Claims for liens assignable; rights of assignee; assignment made by entry on record or separate instrument in writing.
275. Lien enforced by civil action; limitation of actions to enforce liens; limitation where promissory note given; practice, pleading and proceedings to conform to code; amendment of lien statement.
276. Parties to actions to enforce such liens; original contractor to be made party in action by subcontractor, etc.; contractor to defend; owner may make defense at expense of contractor; owner entitled to retain amount of claims, costs, etc., until adjudicated; proceedings where sheriff unable to find original contractor.
- §277. Court may order actions pending to enforce liens to be consolidated; if building in course of construction court may stay trial to permit filing of lien statement.
278. Real estate or other property sold where judgment rendered to enforce lien; manner of making sales; rights of prior incumbrancers and persons not parties to action.
279. Owner may bring action to have liens filed under this act adjudicated; costs taxed against claimant failing to establish lien; clerk of court to cancel liens on record when actions thereon barred.
280. Proceeds of sale distributed ratably if sufficient to pay all claims.
281. Erection or construction of lightning rod or rods not within provisions of act.

PART OF LAWS OF 1909, CH. 182.

§ 271. Persons entitled to mechanic's lien; lien upon whole piece or tract of land, the building and appurtenances; such liens preferred to other liens, etc., attaching subsequent to commencement of building, making of repairs, improvements, etc. Any person who shall under contract with the owner of any tract or piece of land, or with a trustee, agent, husband or wife of such owner, perform labor or furnish material for the erection, alteration or repair of any building, improvement or structure thereon; or who shall furnish material or perform labor in putting up of any fixtures or machinery in, or attachment to, any such building, structure, or improvement; or who shall plant any trees, vines, plants or hedge, in or upon said land; or who shall build, alter or repair, or furnish labor or material for building, altering or repairing any fence or footwalk in or upon said land, or any sidewalk in any street abutting said land, shall have a lien upon the whole of said piece or tract of land, the building and appurtenances, in the manner herein provided, for the amount due to him for such labor, material, fixtures or machinery. Such liens shall be preferred to all other liens or incumbrances which may attach to or upon said land, buildings, or improvements, or either of them, subsequent to the commencement of such building, the furnishing or putting up of such fixtures or machinery, the planting of trees, vines, plants, or hedges, the building of such fence, footwalks, or sidewalks, or the making of any such repairs or improvements. [G. S. 1915, §7557.]

Lien on married woman's real estate; material furnished husband; provision constitutional. *Garrett v. Loftus*, 82 K. 556.

Material furnished husband; personal judgment against wife not authorized. *Garrett v. Loftus*, 82 K. 556.

Shares of cotenant acquired after lien attached; unaffected by lien. *Garrett v. Loftus*, 82 K. 556.

Mechanic's lien purely creation of statute; full compliance with statute. *Potter v. Conley*, 83 K. 676.

Lessee held agent of owner; lien against interest of each. *Potter v. Conley*, 83 K. 676. Lumber used for making forms for concrete structure, held "material." *Lumber Co. v. Douglas*, 89 K. 309.

Written instrument purporting to release mechanic's lien, construed. *Lumber Co. v. Bowersock*, 100 K. 328.

Effect of waiver of mechanic's lien; persons to whose benefit waiver inures. *Lumber Co. v. Bowersock*, 100 K. 328.

Abandonment by owner of property; mortgagee in possession may complete building; priority of liens. *Lumber Co. v. Bowersock*, 100 K. 328.

Lessee held to be agent of owners for the alteration and repair of leased building. *Brown v. Walker*, 100 K. 542.

Determination of priority of various liens upon building; material-men given first liens. *Mercantile Co. v. Investment Co.*, 100 K. 597.

Annotations to similar section of *Old Code*:

Right to lien is statutory; limitation of action; other incumbrancers. *Wood v. Dill*, 3 K. A. 484.

Purchaser in possession has sufficient ownership; deed in another's name. *Hamilton v. Whitson*, 5 K. A. 347.

Building "commenced" when foundation begun, though not made under contract. *Mortgage Co. v. Manufacturing Co.*, 6 K. A. 673.

Deemed completed when work abandoned by owner's consent or fault. *Shaw v. Stewart*, 43 K. 572.

Lien of mechanic measured by interest of holder of property. *Getto v. Friend*, 46 K. 24.

Equitable title in person to whom materials furnished, held sufficient. *Mortgage Trust Co. v. Sutton*, 46 K. 166.

Lien dates from commencement of building; digging for cellar, etc. *Mortgage Co. v. Weyerhaeuser*, 48 K. 335.

Mortgage closed up after excavation begun; priority of mechanic's lien. *Nixon v. Cydon Lodge*, 56 K. 298.

Lien may be acquired only in manner prescribed by statute. *Doane v. Bever*, 63 K. 458.

Lien based upon contract with owner; foreclosure; owner necessary party. *Lang v. Adams*, 71 K. 309.

Record not conclusive as to ownership; claimant to make investigation. *Lang v. Adams*, 71 K. 309.

Lien for labor on oil or gas well; interest of lessee. *Oil Co. v. McEvoy*, 75 K. 515; *Phillips v. Oil Co.*, 76 K. 783.

Concerning lien for material on gas or oil leasehold, see §§ 267-270, *ante*.

§ 272. Claimant to file statement in office of clerk of district court; matters to be set forth in such statement; note given for labor or material; time for filing statements; entries to be made by clerk in mechanic's-lien docket. Any person claiming a lien as aforesaid shall file in the office of the clerk of the district court of the county in which the land is situated a statement setting forth the amount claimed and the items thereof, as nearly as practicable, the name of the owner, the name of the contractor, the name of the claimant, and a description of the property subject to the lien, verified by affidavit: *Provided*, That if any promissory note bearing a lawful rate of interest shall have been taken for such labor or material, it shall not be necessary to file an itemized statement of labor or material furnished, but in lien thereof it shall be sufficient to file a copy of such note, with a sworn statement that said note, or any part thereof, was given for such labor or material used in the construction of such building or improvement; and if the whole of such note shall have been given for such labor or material, the lien shall be for the whole of the principal and interest of said note; but if a part of said note only shall have been given for such labor or material, then the lien shall be for a corresponding amount only, with interest at the rate specified in said note. Such statements shall be filed within four months after the date upon which material was last furnished or labor last performed under contract as aforesaid; and if the claim be for the planting of any trees, vines, plants, or hedge, such statements shall be filed within four months from such planting. Immediately upon the receipt of such statement the clerk of the district court shall enter a record of the same in a book kept for that purpose, to be called the mechanic's-lien docket, which docket shall be ruled off into separate columns, with headings as follows: "When filed," "Name of owner," "Name of claimant," "Amount claimed," "Description of property," and "Remarks"; and the clerks [clerk] shall make the proper entry in each column. [G. S. 1915, § 7558.]

Time of filing statement cannot be increased by subterfuge, etc. *Badger v. Parker*, 85 K. 134.

Contract with lessee; lien obtained where lessee agent of lessor. *Lumber Co. v. Band Co.*, 89 K. 788.

- Lien filed on note in violation of agreement; lien lost. *Lumber Co. v. Band Co.*, 89 K. 788.
- Notes taken for building material not a lien unless lien filed. *Bank v. Randall*, 98 K. 744.
- Sufficiency of different lien statements considered; statements held sufficient. *Brown v. Walker*, 100 K. 542.
- Amendment of lien statements and of pleadings in action held properly allowed. *Brown v. Walker*, 100 K. 542.
- Suspension of work on building; materialmen may treat work as abandoned and file liens. *Mercantile Co. v. Investment Co.*, 100 K. 597.
- Agreement not to file liens if bond given; failure of contractor to give bond; materialmen may file liens. *Mercantile Co. v. Investment Co.*, 100 K. 597.
- Profit not allowed on material not furnished because of abandonment of work. *Mercantile Co. v. Investment Co.*, 100 K. 597.
- Annotations to similar section of *Old Code*:
- Statement for each contract; statement covering several buildings, held void. *Lumber Co. v. Hegwer*, 1 K. A. 623.
- Building deemed completed when work ceases and owner takes possession. *Rice v. Brown*, 1 K. A. 646.
- Mechanic's claim assigned as security; assignor may file mechanic's lien. *Hamilton v. Whitson*, 5 K. A. 347.
- Neither statement nor affidavit signed by claimant, etc.; statement insufficient. *Hentig v. Sperry*, 38 K. 459.
- Statement for mechanic's lien should be verified by affidavit. *Hentig v. Sperry*, 38 K. 459.
- Sufficiency of statement and affidavit made by member of firm. *Town Co. v. Morris*, 39 K. 377.
- Extent to which claim shall be itemized, considered. *Town Co. v. Morris*, 39 K. 377.
- Statement must name some particular person as owner of property. *Blattner v. Wadleigh*, 48 K. 290.
- Statement not itemized as nearly as practicable, held fatally defective. *Nixon v. Cydon Lodge*, 56 K. 298.
- Persons contracting directly with owner held original contractors. *Higley v. Ringle*, 57 K. 222.
- Statement may be filed even where note has been taken. *Higley v. Ringle*, 57 K. 222.
- Time when statement shall be filed, considered. *Higley v. Ringle*, 57 K. 222.
- Lien covers entire premises where record shows lien so claimed. *Higley v. Ringle*, 57 K. 222.
- Lien may be acquired only in manner prescribed by statute. *Doane v. Bever*, 63 K. 458.
- Duty of claimant to ascertain owner; record not conclusive. *Lang v. Adams*, 71 K. 309.

§ 273. Subcontractor, artisan or laborer entitled to lien; statement to be filed; time for filing statement; service of notice on owner of land; amount of liability of owner; payments made to contractor within sixty days at owner's risk; owner not liable to action by contractor within sixty days; owner may pay subcontractor; credit for such payment; fee of clerk for entering statements. Any person who shall furnish any such material or perform such labor under a subcontract with the contractor, or as an artisan or day laborer in the employ of such contractor, may obtain a lien upon such land from the same time, in the same manner, and to the same extent as the original contractor, for the amount due him for such material and labor; and any artisan or day laborer in the employ of such subcontractor may obtain a lien upon such land from the same time, in the same manner, and to the same extent as the subcontractor, for the amount due him for such material and labor, by filing with the clerk of the district court of the county in which the land is situated within sixty days after the date upon which material was last furnished or labor last performed under such subcontract a statement, verified by affidavit, setting forth the amount due from the contractor to the claimant, and the items thereof as nearly as practicable, the name of the owner, the name of the contractor, the name of the claimant, and a description of the property upon which a lien is claimed; and by serving a notice in writing of the filing of such lien upon the owner of the land: *Provided*, That if with due diligence the owner cannot be found in the county where the land is situated, the claimant, after filing an affidavit setting forth such facts, may serve a copy of such statement upon the occupant of the land,

or if the land be unoccupied, may post such copy in a conspicuous place upon the land or any building thereon. Immediately upon the filing of such statement the clerk of said court shall enter a record of the same in the docket provided for in the preceding section and in the manner therein specified: *Provided*, That the owner of any land affected by such lien shall not thereby become liable to any claimant for any greater amount than he contracted to pay the original contractor; but the risk of all payments made to the original contractor shall be upon such owner until the expiration of the sixty days hereinbefore specified; and no owner shall be liable to an action by such contractor until the expiration of said sixty days, and such owner may pay such subcontractor the amount due him from such contractor for such labor and material, and the amount so paid shall be held and deemed a payment of said amount to the original contractor. The district clerk shall be entitled to a fee of fifty cents in each case for entering the statements provided for in this act, and the costs of filing and entering such statement shall be recovered as part of the costs of enforcing such liens. [G. S. 1915, § 7559.]

Subcontractor not required to know exact description of property. *Lumber Co. v. Smith*, 84 K. 190.

Subcontractor need not know the number or kind of structures. *Lumber Co. v. Smith*, 84 K. 190.

Subcontractor entitled to single lien although improvement in different forms. *Lumber Co. v. Smith*, 84 K. 190.

Payments to contractor within sixty days; subcontractor's lien not defeated. *Rankin v. Rankin*, 86 K. 899.

Failure to state amount due from owner to contractor, immaterial. *Rankin v. Rankin*, 86 K. 899.

Designation as laborer and as subcontractor, held not prejudicial. *Rankin v. Rankin*, 86 K. 899.

Personal judgment against owner; contract to pay must be shown. *Trimmer v. Sells*, 87 K. 647; *Wall Paper Co. v. Perkins*, 90 K. 725.

Subcontractor must serve written notice upon owner of land. *Trimmer v. Sells*, 87 K. 647.

Confusion of accounts concerning separate buildings; statements held sufficiently itemized. *Wall Paper Co. v. Perkins*, 90 K. 725.

Notice by registered mail which reaches the owner personally is valid. *Wall Paper Co. v. Perkins*, 90 K. 725.

Subcontractor not bound by subsequent agreement of contractor with owner. *Wall Paper Co. v. Perkins*, 90 K. 725.

Personal judgment against owner where contractor agent of owner. *Wall Paper Co. v. Perkins*, 90 K. 725.

Subcontractor's bond to contractor; available to laborers and materialmen; notice. *Griffith v. Stucker*, 91 K. 47.

Surety bond for faithful performance of contract held to inure to benefit of laborers and materialmen. *Manufacturing Co. v. Deposit Co.*, 100 K. 28.

Subcontractor must take notice of principal contract, but is not bound by all its terms; not bound to know of nonfulfillment of contract. *Mercantile Co. v. Investment Co.*, 100 K. 597.

Annotations to similar section of *Old Code*:

Completion of building; acts held to warrant filing of statement. *Rice v. Brown*, 1 K. A. 646.

Right to lien created at or before material furnished. *Weaver v. Sells*, 10 K. 609.

Subcontractor may consider building as completed when abandoned by contractor. *Shaw v. Stewart*, 43 K. 572.

Subcontractor presumed to have knowledge of original contract; subsequent agreements. *Shaw v. Stewart*, 43 K. 572.

Lumber furnished on credit of contractor; subcontractor's lien not extinguished. *Deatherage v. Henderson*, 43 K. 684.

Notice to owner of premises; reasonable time for serving notice. *Deatherage v. Henderson*, 43 K. 684.

Subcontractor need not separate and state different elements of claim. *Nixon v. Cydon Lodge*, 56 K. 298.

Provisions of law do not extend to subcontractor of subcontractor. *Nixon v. Cydon Lodge*, 56 K. 298.

Subcontractor bound by original contract; not affected by subsequent agreements. *Nixon v. Cydon Lodge*, 56 K. 298.

Abandonment of contract; rights of subcontractor; limit of subcontractor's lien. *Hotel Co. v. Hardware Co.*, 56 K. 448.

Material sold without reference to use; not entitled to lien. *Manufacturing Co. v. Best*, 63 K. 187.

Lien may be acquired only in manner prescribed by statute. *Doane v. Bever*, 63 K. 458.
 Action cannot be maintained by contractor until expiration of sixty days. *Anthony v. Smithson*, 70 K. 134.
 Name of contractor mentioned only incidentally; statement of subcontractor insufficient. *Sash Co. v. Heiman*, 71 K. 43.
 Payments to other subcontractors within sixty days; amount of credit. *Fossett v. Lumber Co.*, 76 K. 428.
 Failure of contractor to complete building; damages offset against subcontractor. *Fossett v. Lumber Co.*, 76 K. 428.
 Owner may contest amount due and extent of lien; proceedings. *Sash Co. v. Weil*, 80 K. 606.
 Owner may reduce lien by proving damages from defects, etc. *Sash Co. v. Weil*, 80 K. 606.
 Subcontractor must state name of contractor; recitals held insufficient. *Lumber Co. v. Washington*, 80 K. 613.
 Statement must show improvement made under contract with owner. *Lumber Co. v. Washington*, 80 K. 613.

§ 274. Claims for liens assignable; rights of assignee; assignment made by entry on record or separate instrument in writing. All claims for liens and rights of action to recover therefor under this act shall be assignable so as to vest in the assignee all rights and remedies herein given, subject to all defenses thereto that might be made if such assignment had not been made. Where a statement has been filed and recorded as herein provided, such assignment may be made by an entry, on the same page of the mechanic's-lien docket containing the record of the lien, signed by the claimant or his lawful representative, and attested by the clerk; or such assignment may be made by a separate instrument in writing. [G. S. 1915, § 7560.]

Annotations to similar section of *Old Code*:

Assignment to secure lesser debt; assignor may file mechanic's lien. *Hamilton v. Whitson*, 5 K. A. 347.
 Assignor may foreclose lien; assignee made party; amount of recovery. *Hamilton v. Whitson*, 5 K. A. 347.
 Change in firm does not affect lien. *Brown v. School District*, 48 K. 709.

§ 275. Lien enforced by civil action; limitation of actions to enforce liens; limitation where promissory note given; practice, pleading and proceedings to conform to code; amendment of lien statement. Any lien provided for by this act may be enforced by civil action in the district court of the county in which the land is situated, and such action shall be brought within one year from the time of the filing of said lien with the clerk of said court: *Provided*, That where a promissory note is given such action may be brought at any time within one year from the maturity of said note. The practice, pleading and proceedings in such action shall conform to the rules prescribed by the code of civil procedure as far as the same may be applicable; and in case of action brought, any lien statement may be amended by leave of court in furtherance of justice as pleadings may be in any matter, except as to the amount claimed. [G. S. 1915, § 7561.]

Amendment of petition more than one year after lien filed, held proper. *Lumber Co. v. Collinson*, 97 K. 791.
 Matters of defense in action to foreclose lien, considered. *Lumber Co. v. Morris*, 99 K. 263.
 Amendment of lien statements and of pleadings in action held properly allowed. *Brown v. Walker*, 100 K. 542.
 Principles of equity applied to foreclosure and adjustment of mechanics' liens. *Mercantile Co. v. Investment Co.*, 100 K. 597.
 Amount of recovery on claim for material; profit added deemed reasonable. *Mercantile Co. v. Investment Co.*, 100 K. 597.

Annotations to similar section of *Old Code*:

Lien not preserved against other incumbrancers by service on owner. *Wood v. Dill*, 3 K. A. 484.
 Judgment in action prematurely brought no bar to future action. *Seaton v. Hixon*, 35 K. 663.
 Contractor may be made party after expiration of year. *Sash Co. v. Heiman*, 65 K. 5.

Provision concerning amendment permits correcting description, owner's name, etc.; constitutionality. *Atkinson v. Woodmansee*, 68 K. 71.
Action premature as to some counts; other counts triable. *Anthony v. Smithson*, 70 K. 132.
Practice in action by subcontractor where contractor makes default. *Sash Co. v. Weil*, 80 K. 606.

§ 276. Parties to actions to enforce such liens; original contractor to be made party in action by subcontractor, etc.; contractor to defend; owner may make defense at expense of contractor; owner entitled to retain amount of claims, costs, etc., until adjudicated; proceedings where sheriff unable to find original contractor. In such actions all persons whose liens are filed as herein provided, and other incumbrancers, shall be made parties, and issues shall be made and trials had as in other cases. Where such an action is brought by a subcontractor, or other person not the original contractor, such original contractor shall be made a party defendant, and shall at his own expense defend against the claim of every subcontractor, or other person claiming a lien under this act, and if he fails to make such defense the owner may make the same at the expense of such contractor; and until all such claims, costs and expenses are finally adjudicated, and defeated or satisfied, the owner shall be entitled to retain from the contractor the amount thereof, and such costs and expenses as he may be required to pay: *Provided*, That if the sheriff of the county in which such action is pending shall make return that he is unable to find such original contractor, the court may proceed to adjudicate the liens upon the land and render judgment to enforce the same with costs. [G. S. 1915, § 7562.]

No judgment against owner until subcontractor's liens are adjusted. *Lofsted v. Bohman*, 88 K. 660.

Annotations to similar section of *Old Code*:

All lien-holders and incumbrancers may be made parties. *Town Co. v. Morris*, 39 K. 377.

Subcontractor must make contractor a party; effect of failure; proceedings. *Tracy v. Kerr*, 47 K. 656.

Contractor may be made party after expiration of year. *Sash Co. v. Heiman*, 65 K. 5.

Owner is necessary party in action to foreclose mechanic's lien. *Lang v. Adams*, 71 K. 309.

Owner may defend where contractor makes default; nature of defense. *Sash Co. v. Weil*, 80 K. 606.

§ 277. Court may order actions pending to enforce liens to be consolidated; if building in course of construction court may stay trial to permit filing of lien statement. If several actions brought to enforce the liens herein provided for are pending at the time, the court may order them to be consolidated; and in any action brought to enforce a lien under this act, if the building or other improvement is still in course of construction, the court, on application of any party engaged in furnishing labor or materials for such building or improvement, may stay the trial thereof for a reasonable time to permit the filing of a lien statement by such party under the provisions of this act. [G. S. 1915, § 7563.]

§ 278. Real estate or other property sold where judgment rendered to enforce lien; manner of making sales; rights of prior incumbrancers and persons not parties to action. In all cases where judgments may be rendered in favor of any person or persons to enforce a lien under the provisions of this act, the real estate or other property shall be ordered to be sold as in other cases of sales of real estate, such sale to be without prejudice to the rights of any prior incumbrancers, owner or other person not a party to the action. [G. S. 1915, § 7564.]

Section applicable to lien on oil and gas leasehold. *Black v. Gairth*, 88 K. 338.

§ 279. Owner may bring action to have liens filed under this act adjudicated; costs taxed against claimant failing to establish lien; clerk of court to cancel liens on record when actions thereon barred. If any lien or liens shall be filed under the provisions of this act and no action to foreclose any of said liens shall have been commenced, the owner of the land may file his petition in the district court of the county in which said land is situated, making said lien claimants defendants therein, and praying for an adjudication of said lien or liens so claimed, and if any such lien claimant shall fail to establish his lien, the court may tax against said claimant the whole or such portion of the costs of such action as may be just: *Provided*, That if no action to foreclose or adjudicate any lien filed under the provisions of this act shall be instituted within the time provided in section 653, the clerk of the district court shall enter under the head of "Remarks," in the mechanic's-lien docket hereinbefore named, that said lien is canceled by limitation of law. [G. S. 1915, § 7565.]

"Section 653," mentioned herein, is § 275, *supra*.

Annotation to similar section of *Old Code*:

Judgment against owner by default set aside upon motion; proceedings. *Sash Co. v. Weil*, 80 K. 606.

§ 280. Proceeds of sale distributed ratably if insufficient to pay all claims. If the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount due each. [G. S. 1915, § 7566.]

§ 281. Erection or construction of lightning rod or rods not within provisions of act. The erecting or constructing of a lightning rod or rods on any buildings shall not be considered such an improvement, fixture, or attachment as to come under the provisions of this article. [G. S. 1915, § 7567.]

ARTICLE 4.—Bond to Secure Payment of Claims.

§282. No lien to attach if contractor or owner execute and file bond with clerk of district court; amount and approval of such bond; liens already filed discharged; suit on such bond by any person interested.

283. Contract relating to public improvements in sum exceeding one hundred dollars; public officer to take

bond from contractor; amount and conditions of bond.

§284. Such bond subject to approval of clerk of district court; filed in office of such clerk; liens not to attach after bond approved and filed; liens already filed discharged; claimant for labor or material may sue on such bond; limitation of actions on such bond.

PART OF LAWS OF 1909, CH. 182.

§ 282. No lien to attach if contractor or owner execute and file bond with clerk of district court; amount and approval of such bond; liens already filed discharged; suit on such bond by any person interested. The contractor or owner mentioned in this act may execute a bond to the state of Kansas for the use of all persons in whose favor liens might accrue by virtue of this act, conditioned for the payment of all claims which might be the basis of liens; which bond shall be in a sum not less than the contract price, and with good and sufficient sureties, whose qualifications shall be verified in accordance with this code, such surety as shall be approved by the clerk of the district court in the county in which the property is situated, and shall file such bond in the office of said clerk before work shall be commenced or material delivered on such contract, and when such bond is so approved and filed no lien shall attach under this act, and if when such bond is filed liens have already

been filed, such liens shall be discharged. Suit may be brought on said bond by any person interested. [G. S. 1915, § 7568.]

The foregoing section contains the same general provisions as section 638*d* of the *Old Code* printed in the General Statutes of 1901 as section 5129. Said section 5129 of the General Statutes of 1901 was amended by chapter 183 of the Laws of 1909, which took effect March 20, 1909, printed in the General Statutes of 1909 on page 1364 without a section number.

Section 755 of the Code of 1909, which took effect May 29, 1909, is as follows: "Chapter 80 of the General Statutes of 1901, entitled 'An act to establish a code of civil procedure,' and all acts amendatory thereof and supplemental thereto, are hereby repealed, *save and except such as are or may be passed at the Session of 1909.*"

Said chapter 183 of the Laws of 1909 was amendatory of an act supplemental to the act mentioned in the foregoing paragraph and was passed at the session of 1909.

The foregoing section, being section 660 of the Code of 1909, contains the same general provisions as said chapter 183 of the Laws of 1909 and is a later enactment than said chapter 183. It is thought, therefore, to be less confusing to make this reference to said chapter 183 of the Laws of 1909 than to reprint the same herein.

Action upon bond; real party in interest; evidence. *Shores v. Surety Co.*, 84 K. 592.
Practice where bond set up as defense to foreclosure action. *Lumber Co. v. Miles*, 85 K. 363.

Surety not released because materialman applied payments on old accounts. *Lumber Co. v. Douglas*, 89 K. 308.

Rules of suretyship not applicable to corporations issuing indemnity bonds. *Lumber Co. v. Douglas*, 89 K. 308.

Sufficiency of petition in action on bond, considered. *Sheahan v. Guaranty Co.*, 99 K. 704.
Bond prevents liens from attaching irrespective of failure of public officers to comply with terms of bond given under § 283. *Surety Co. v. Hudson*, 98 K. 775.

Annotations to similar section of *Old Code*:

Bond must be approved; all lots must be included. *Kille v. Bentley*, 6 K. A. 804.

Bond is substitute for statutory liens; liens do not attach. *Risse v. Planing Mill Co.*, 55 K. 518.

Sureties not relieved by slight departure from plans and specifications. *Risse v. Planing Mill Co.*, 55 K. 518.

Surety not relieved by broken promise of principal. *Risse v. Planing Mill Co.*, 55 K. 518.

Lien accruing under former statute not divested by statutory bond. *Hotel Co. v. Hardware Co.*, 56 K. 448.

§ 283. Contract relating to public improvements in sum exceeding one hundred dollars; public officer to take bond from contractor; amount and conditions of bond. That whenever any public officer shall, under the laws of the state, enter into contract in any sum exceeding one hundred dollars, with any person or persons for the purpose of making any public improvements, or constructing any public building or making repairs on the same, such officer shall take from the party contracted with a bond with good and sufficient sureties to the state of Kansas, in a sum not less than the sum total in the contract, conditioned that such contractor or contractors shall pay all indebtedness incurred for labor or material furnished in the construction of said public building or in making said public improvements. [G. S. 1915, § 7569.]

Bond given after work completed; valid; rights of laborers, etc. *Griffith v. Stucker*, 91 K. 47.

Interpretation of bond given under statute; liability of surety company. *Hensley v. School District*, 97 K. 56; *Shannon v. Abrams*, 98 K. 26.

Surety company held liable for all necessary and pertinent bills incurred. *Shannon v. Abrams*, 98 K. 26.

Bridge contracts; failure to carry out contracts; county authorized to complete work and recover for labor and expenses from bonding company. *Kanzius v. Jenkins*, 98 K. 94.

Obligation held to be unconditional promise to answer for defaults of the contractors. *City of Topeka v. Brooks*, 99 K. 643.

Effect of release of judgment against one joint debtor, considered. *City of Topeka v. Brooks*, 99 K. 643.

Annotations to similar section of *Old Code*:

Laborer or materialman may claim lien on public building. *Comm'rs of Jewell Co. v. Manufacturing Co.*, 52 K. 253.

Failure of officer to take bond; public corporation not liable. *Lumber Co. v. Elliott*, 59 K. 42; *Freeman v. Chanute*, 63 K. 573.

Bond is for benefit of public, not for corporation. *Freeman v. Chanute*, 63 K. 573.

Surety not liable where contract void; notice of illegal proceedings. *Surety Co. v. Brick Co.*, 73 K. 196.

Bond of contractor to city deemed taken by public officer. *Bonding Co. v. Dickey*, 74 K. 791.

§ 284. Such bond subject to approval of clerk of district court; filed in office of such clerk; liens not to attach after bond approved and filed; liens already filed discharged; claimant for labor or material may sue on such bond; limitation of actions on such bond. That such bond shall be subject to the approval of the clerk of the district court of the county in which such public improvement is to be made or such public building is to be erected and shall be filed in the office of said clerk. When such bond is so approved and filed, no lien shall attach under this act, and if when such bond is filed liens have already been filed, such liens shall be discharged. Any person to whom there is due any sum for labor or material furnished, as stated in the preceding section, or his assigns, may bring an action on said bond for the recovery of said indebtedness: *Provided*, That no action shall be brought on said bond after six months from the completion of said public improvements or public buildings. [G. S. 1915, § 7570.]

Limitation of actions; abandonment by contractor not deemed completion. *Hull v. Bonding Co.*, 86 K. 342.

Bond given after work completed; valid; rights of laborers, etc. *Griffith v. Stucker*, 91 K. 47.

Annotations to similar section of *Old Code*:

Laborer or materialman entitled to mechanic's lien upon public building. *Comm'r's of Jewell Co. v. Manufacturing Co.*, 52 K. 253.

Mistake in pleading; amendment after six months; action not barred. *Bonding Co. v. Dickey*, 74 K. 791.

CHAPTER 24.—MANUFACTURING ESTABLISHMENTS.*

§ 285. Elevators, hoisting-shafts or well-holes in manufacturing establishments to be inclosed or secured to protect employees.

286. Hand-rails to be provided in stairways; stairs to be properly secured; doors to open outwardly and not be fastened during working hours.

287. Fire-escapes in manufacturing establishments; number and construction of such fire-escapes.

288. Belt-shifters or other safe contrivance to be supplied; safety appliances and safeguards required in manufacturing establishments; duty of owner or operator to furnish same.

289. Action for damages for death or injury of employee in manufac-

turing establishment where absence of safeguards, etc., contributed to such death or injury; action by personal representative of deceased; place of bringing action.

§ 290. Sufficient for plaintiff to prove in such action in the first instance that such death or injury resulted from failure to provide safeguards or that such failure contributed to such death or injury.

291. Manufacturing establishments, as used in this act, defined; smelters, oil refineries, cement works, mills of every kind, machine and repair shops, etc., included.

292. "Person," as used in certain connections in this act, defined.

LAWS OF 1903, CH. 356.

AN ACT requiring safeguards for the protection of all persons employed or laboring in manufacturing establishments, and providing civil remedies for all persons so engaged, or their personal representatives, in cases where any such person may be killed or injured while employed or laboring in any manufacturing establishment which is not properly provided with the safeguards required by this act.

§ 285. Elevators, hoisting-shafts or well-holes in manufacturing establishments to be inclosed or secured to protect employees. Every person owning or operating any manufacturing establishment which may contain any elevator, hoisting-shaft or well-hole shall cause the same to be properly and substantially inclosed or secured, in order to protect the lives or limbs of those employed in such establishment. [G. S. 1915, § 5886.]

Failure properly to inclose elevator, *prima facie* evidence of negligence. *Fowler v. Enzenberger*, 77 K. 406.

* Concerning factory inspection, see ch. 14, *Department of Labor and Industry*.

Purpose of statute is to insure general protection. *Alkire v. Cudahy*, 83 K. 373.

No recovery when negligence of company did not cause injury. *Weeks v. Packing Co.*, 90 K. 365.

This act applies to all classes of employees. *Smith v. Bowersock*, 95 K. 96.

All sides of the elevator shaft should be inclosed. *Myrick v. Manufacturing Co.*, 96 K. 17.

§ 286. Hand-rails to be provided in stairways; stairs to be properly secured; doors to open outwardly and not be fastened during working hours. Proper and substantial hand-rails shall be provided in all stairways in manufacturing establishments. The stairs shall be properly secured at the sides and ends, and all doors leading into such establishments shall be so constructed as to open outwardly, and shall be neither locked, bolted nor fastened during working hours. [G. S. 1915, § 5887.]

§ 287. Fire-escapes in manufacturing establishments; number and construction of such fire-escapes. In all manufacturing establishments three or more stories high, at least one fire-escape, and as many more as may be reasonably necessary, shall be provided on the outside of said establishment, connecting with each floor above the first, well fastened and secured, and of sufficient strength. Each of said fire-escapes shall have landings or balconies not less than six feet in length and three feet in width, guarded by iron railings not less than three feet in height, and embracing at least two windows at each story, and connecting with the interior by easily accessible and unobstructed openings, and the balconies or landings shall be connected by iron stairs not less than eighteen inches wide, the steps not to be less than six inches tread, placed at a proper slant, and protected by a well-secured hand-rail on each side, with twelve-inch drop-ladder from the lower platform reaching to the ground. [G. S. 1915, § 5888.]

§ 288. Belt-shifters or other safe contrivance to be supplied; safety appliances and safeguards required in manufacturing establishments; duty of owner or operator to furnish same. Every person owning, or operating any manufacturing establishment in which machinery is used shall furnish and supply for use therein belt-shifters, or other safe mechanical contrivance, for the purpose of throwing on or off belts or pulleys; and wherever it is practicable, machinery shall be operated with loose pulleys. All vats, pans, saws, planers, cog gearing, belting, shafting, set-screws and machinery of every description used in a manufacturing establishment shall, where practicable, be properly and safely guarded, for the purpose of preventing or avoiding the death of or injury to the persons employed or laboring in any such establishment; and it is hereby made the duty of all persons owning or operating manufacturing establishments to provide and keep the same furnished with safeguards as herein specified. [G. S. 1915, § 5889.]

Defense of contributory negligence not excluded by this act. *Madison v. Clippinger*, 74 K. 700. Overruled by *Caspar v. Lewin*, 82 K. 604.

Failure to guard machinery *prima facie* sufficient to establish liability. *Brick Co. v. Stark*, 77 K. 648.

This act simply requires that employees be protected from machinery. *Henschell v. Railway Co.*, 78 K. 411.

Employee injured while resting, by direction of company, may recover. *Brick Co. v. Fisher*, 79 K. 576.

"Assumed risk" no defense; "contributory negligence" a proper defense. *Lewis v. Barton*, 82 K. 163.

This statute applicable to any person performing duty for factory. *Caspar v. Lewin*, 82 K. 604.

Contributory negligence no defense under this act. *Caspar v. Lewin*, 82 K. 604.

Practicability of guarding machinery need not be pleaded. *Gambill v. Bowen*, 82 K. 840.

"Assumption of risk," good defense, as applied to common-law charge. *Sibley v. Cotton-mills Co.*, 85 K. 256.

Practicability of guarding knives of planer; device used as guard. *Slater v. Railway Co.*, 91 K. 226.

Safeguard against belts and pulleys extends beyond mere belt-shifting. *Rank v. Packing Box Co.*, 92 K. 917.

Death caused by explosion in powder-mill; "factory act" not applicable. *Byland v. Powder Co.*, 93 K. 288.

Act applicable to railroad car-repair shop, where railroad has elected not to come under workmen's compensation act. *Truman v. Railroad Co.*, 98 K. 761.

Unguarded circular saw; burden of proof upon employer to show impracticability of attaching safeguard. *Truman v. Railroad Co.*, 98 K. 761.

§ 289. Action for damages for death or injury of employee in manufacturing establishment where absence of safeguards, etc., contributed to such death or injury; action by personal representative of deceased; place of bringing action. If any person employed or laboring in any manufacturing establishment shall be killed or injured in any case wherein the absence of any of the safeguards or precautions required by the act shall directly contribute to such death or injury, the personal representatives of the person so killed, or the person himself in case of injury only, may maintain an action against the person owning or operating such manufacturing establishment for the recovery of all proper damages. In cases where the action is brought by the personal representative of the deceased, said action shall be governed in all respects not herein provided for by the provisions of the statutes now in force which authorize and regulate the bringing of actions to recover damages in cases where the death of one is caused by the wrongful act or omission of another: *Provided*, Action shall be commenced in the county where the accident occurred. [G. S. 1915, § 5890.]

Where noncompliance only contributes among other causes, company held liable. *Alkire v. Cudahy*, 83 K. 373.

Act gives father no rights in addition to common-law rights. *Gibson v. Packing Co.*, 85 K. 346; *Howell v. Cement Co.*, 86 K. 450.

§ 290. Sufficient for plaintiff to prove in such action in the first instance that such death or injury resulted from failure to provide safeguards or that such failure contributed to such death or injury. In all actions brought under and by virtue of the provisions of this act, it shall be sufficient for the plaintiff to prove in the first instance, in order to establish the liability of the defendant, that the death or injury complained of resulted in consequence of the failure of the person owning or operating the manufacturing establishment where such death or injury occurred to provide said establishment with safeguards as required by this act, or that the failure to provide such safeguard directly contributed to such death or injury. [G. S. 1915, § 5891.]

Violation of duty imposed *prima facie* sufficient to establish liability. *Brick Co. v. Stark*, 77 K. 648.

Evidence showing necessity of guard, establishes negligence of defendant. *Brick Co. v. Fisher*, 79 K. 576.

Liability established, by showing failure to establish safeguards. *Caspar v. Lewin*, 82 K. 604; *Bubb, Adm'r. v. Railway Co.*, 89 K. 303.

Unguarded circular saw; burden of proof on employer to show impracticability of attaching safeguard. *Truman v. Railroad Co.*, 98 K. 761.

§ 291. Manufacturing establishments, as used in this act, defined; smelters, oil refineries, cement works, mills of every kind, machine and repair shops, etc., included. Manufacturing establishments, as those words are used in this act, shall mean and include all smelters, oil refineries, cement works, mills of every kind, machine and repair shops, and, in addition to the foregoing, any other kind or character of manufacturing establishment, of any nature or description whatsoever, wherein any natural products or other articles or materials of any kind, in a raw or unfinished or incomplete state or condition, are converted into a new or improved or different form. [G. S. 1915, § 5892.]

Place where old iron is sorted, comes within definition. *Caspar v. Lewin*, 82 K. 604.
"City waterworks" not within meaning of this section. *Ward v. City of Norton*,
86 K. 906.
"Grain elevator" held to be a "manufacturing establishment." *Buchanan v. Blair*, 90 K.
420.
Railroad car-repair shop held within provisions of this act. *Truman v. Railroad Co.*,
98 K. 761.

§ 292. "Person," as used in certain connections in this act, defined.
Wherever the expression occurs in this act in substantially the following words, "Every person owning or operating any manufacturing establishment," or where language similar to that is used, the word "person" in that connection shall be held and construed to mean any person or persons, partnership, corporation, receiver, trust, trustee, or any other person or combination of persons, either natural or artificial, by whatever name he or they may be called. [G. S. 1915, § 5893.]

CHAPTER 25.—MILITIA.

§293. Employer refusing permission to employee to attend drill or annual muster, etc., guilty of misdemeanor; penalty for employer discharging or punishing employee for being absent in performance of military duty.

PART OF LAWS OF 1901, CH. 255, AS AMENDED BY LAWS OF 1903, CH. 359.

§ 293. Employer refusing permission to employee to attend drill or annual muster, etc., guilty of misdemeanor; penalty for employer discharging or punishing employee for being absent in performance of military duty. There shall be an annual muster and camp of instruction of the Kansas national guard at such time and place or places as the commander-in-chief may designate, at which time the several organizations of the Kansas national guard shall be drilled, inspected and reviewed and exercised in military tactics and maneuvers in accordance with the orders of the officer in command of the camp. When under exclusive state jurisdiction, said camp of instruction shall continue for a period of not less than five days nor more than ten days, and shall be governed by such rules and regulations as shall be prescribed by the military board and approved by the commander-in-chief. When such camp of instruction shall be in connection with and a part of an encampment of militia and the regular army of the United States, it may be extended beyond the limit of ten days, and shall be under the control and jurisdiction of the officer of the United States army in command. It shall be the duty of each commissioned officer and enlisted man of the Kansas national guard to be present and perform all duties required of him at each annual muster and camp of instruction, unless regularly excused by competent authority; and it shall be a misdemeanor for any employer to refuse permission to any employee who is a member of the Kansas national guard to attend drill or annual muster, or perform active service, when so ordered by the commander-in-chief; and any employer who shall refuse, or shall discharge an employee from his service or shall in any way punish an employee for being absent in the performance of military duty, when so ordered by competent authority, shall on conviction be punished by a fine of not less than five dollars nor more than fifty dollars for each offense. [G. S. 1915, § 6199.]

CHAPTER 26.—MINES AND MINING.*

- Article 1. Acts of Miner Endangering Lives, etc. §§ 294-296.
 2. Bath-houses at Coal Mines. §§ 297-301.
 3. Black Powder, Use in Coal Mines. §§ 302-307.
 4. Dynamite and Other Detonating Explosives. §§ 308-312.
 5. Escape-shafts in Coal Mines. §§ 313-317.
 6. Examining Board, Certification of Miners. §§ 318-328.
 7. Fraudulent Use of Check Numbers. §§ 329-330.
 8. General Act for Health and Safety of Miners.
 (Act of 1883.) §§ 331-342.
 9. General Act for Health and Safety of Miners.
 (Act of 1897.) §§ 343-359.
 10. Lead and Zinc Mines, Eight-hour Day. §§ 360-361.
 11. Mine-rescue Work. §§ 362-370.
 12. Room-and-pillar Plan, Entries, etc. §§ 371-373.
 13. Shot-firers, Firing of Shots, etc. §§ 374-381.
 14. Sprinkling and Removal of Dust, etc. §§ 382-386.
 15. Telephone Systems in Coal Mines. §§ 387-392.
 16. Weighing of Coal at the Mine. §§ 393-399.

ARTICLE 1.—Acts of Miner Endangering Lives, etc.†

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| §294. Unlawful for miner to have more than twenty-five pounds of powder or other explosive at one time; manner and place of keeping such amount; pit bosses, etc., to see that act is complied with; penalty for violation of act; owner, etc., may send in larger | amount for purpose of distribution to miners.
§295. Miner, workman, etc., doing acts which endanger lives or health of persons or security of mine or machinery, etc., guilty of misdemeanor; punishment.
296. Repeal of acts in conflict herewith. |
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LAWS OF 1891, CH. 147, AS AMENDED BY LAWS OF 1913, CH. 228.

AN ACT to amend an act entitled "An act to provide for the health and safety of persons employed in and about the coal mines of Kansas, and providing for the inspection of the same," and amendatory of section 3851 of the General Statutes of 1889.

§ 294. Unlawful for miner to have more than twenty-five pounds of powder or other explosive at one time; manner and place of keeping such amount; pit bosses, etc., to see that act is complied with; penalty for violation of act; owner, etc., may send in larger amount for purpose of distribution to miners. (*Explosives.*) It shall be unlawful for any miner to have in his possession, in any coal mines, shaft, slope or pit in this state, more than twenty-five pounds of powder or any other explosive substance at any one time; and all such powder or other explosive substance shall be kept in a tight box securely locked, and such boxes shall be kept at least twenty yards from the working face in all such coal mines, slopes, drifts, or pits; and it shall be the duty of all pit bosses or other persons who shall be in charge and control of any coal mine, slope drift or pit in this state to keep watch over and see that the provisions of this act are complied with; and any person violating or neglecting to comply with the provi-

* Concerning mining of coal at the penitentiary, see ch. 12, *Convict Labor*.

† For regulations concerning black powder see article 3 of this chapter.

sions of this act shall be deemed guilty of a misdemeanor, and shall on conviction before any court having jurisdiction thereof be fined in any sum not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail not more than thirty days, for each and every such offense; but nothing contained in this act or any other law of the state of Kansas shall be construed to prohibit the owner, lessee or operator of any coal mine from taking or sending more than twenty-five pounds of powder at any one time into such mine for the purpose of making delivery of twenty-five-pound packages of such powder to the miners employed in such mine. [G. S. 1915, § 6309.]

§ 295. Miner, workman, etc., doing acts which endanger lives or health of persons or security of mine or machinery, etc., guilty of misdemeanor; punishment. Any miner, workman or other person who shall intentionally injure any safety-lamp, instrument, air-way, brattice, or obstruct or throw open air-ways, or carry lighted lamps, pipes or matches into places worked by the light of safety-lamps, or shall remove or disturb any part of the machinery, or who shall open a door and not close it again, or enter any place of the mine against caution, or disobey any order given in carrying out the provisions of this act, or who shall do any willful act whereby the lives or health of persons or the security of the mine or the machinery is endangered, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine or imprisonment, at the discretion of the court. [G. S. 1915, § 6310.]

§ 296. Repeal of acts in conflict herewith. All acts or parts of acts in conflict with the provisions of this act are hereby repealed. [G. S. 1915, § 6311.]

ARTICLE 2.—Bath-houses at Coal Mines.

§297. Owner, lessee, etc., to provide bath-house convenient to entrance of mine; equipment of such bath-house; floor space required; flooring in wash-room or bathroom to be concrete; specifications for lockers or hangers; number of lockers or hangers required; number of shower baths; employees to furnish towels, soap, and lock for locker or hanger and be responsible for property left therein; owner, etc., to keep such bath-house clean and sanitary; act not to apply to mines operated on long-wall system or over 600 feet in depth or to any strip mine; specifications for walls, floors and lockers.

§298. Owner, lessee, etc., not liable for loss or destruction of property left by employees in such bath-house.

299. Penalty for failure of owner, lessee, etc., to comply with provisions of act; each day of such failure to constitute a separate offense; state inspector of mines to have general supervision of this law, etc.; provisions concerning bath-houses already in existence; authority of state inspector.

300. Persons using such bath-house to remove cast-off wearing apparel therefrom; unlawful to commit any nuisance, etc., in such bath-house.

301. Penalty for violation of preceding section.

LAWS OF 1911, CH. 222, AS AMENDED BY LAWS OF 1913, CH. 226, LAWS OF 1915, CH. 245, AND LAWS OF 1917, CH. 241.

AN ACT to promote the health of employees in coal mines by providing bath-houses at coal mines and prescribing penalties for the violation thereof.

§ 297. Owner, lessee, etc., to provide bath-house convenient to entrance of mine; equipment of such bath-house; floor space required; flooring in wash-room or bathroom to be concrete; specifications for lockers or hangers; number of lockers or hangers required; number of shower baths; employees to furnish towels, soap, and lock for locker or hanger and be responsible for property left therein; owner, etc., to keep such bath-house clean and sanitary; act not to apply to mines operated on

long-wall system or over 600 feet in depth or to any strip mine; specifications for walls, floors and lockers. It shall be duty of every owner, or lessee, its officers or agents, or other person or persons having jurisdiction or direction of any coal mines within the state of Kansas, to provide on and after the passage and publication of this act, a suitable building, which shall be convenient to the principal entrance of such mine or mines, and equipped with individual lockers or hangers, benches or seats, proper light, heat, hot and cold water, and shower baths, and maintain same in good order, for the use of persons employed therein, for the purpose of washing and bathing of employees and changing of clothing. Said building or bath-house to have sufficient floor space for the accommodation of miners or others using the same. The flooring in said wash-room or bathroom to be of concrete or cement and the flooring in the changing room to be optional with the owner as to the material used. All lockers in new bath-houses when made of steel, shall not be less than 12 inches by 12 inches by 48 inches in height; when made of lumber shall not be less than 12 inches by 22 inches by 48 inches in height; with partitions in centers of wood lockers. Individual hangers shall consist of not less than three hooks upon which to hang clothing and a receptacle of suitable size for use in connection therewith, attached to a proper chain or wire rope, and so suspended as to admit of hanger being raised such height that the wearing apparel, when hung thereon, will not be less than seven feet above the floor of said building, and of being locked in that position. The lockers or hangers in each bath-house shall be sufficient in number to accommodate the employees using the same, and there shall be one shower bath for every 15 employees using the same. Said employees shall furnish their own towels and soap, and lock for their lockers or hanger, exercise control over, and be responsible for the property by them left therein. The individual owner, operator, lessee, agent or company or corporation shall keep said bath-houses in a clean and sanitary condition: *Provided*, All bath-houses built at underground mines sunk after the passage of this act, shall be constructed as follows: The walls shall be built of concrete blocks, cement, brick, stone or other noncombustible material. The floors shall be of concrete or cement. The lockers shall be made of steel, not less than 12 inches by 12 inches, by 48 inches in height: *And provided further*, That this section shall not apply to any mine operated on the long-wall system, any mine in excess of 600 feet in depth, or any strip mine or coal stripping. [G. S. 1915, § 6342, as amended by Laws 1917, ch. 241, § 1; May 26.]

Act of 1911, providing for bath-houses, held valid. *The State v. Reaser*, 93 K. 628.

§ 298. Owner, lessee, etc., not liable for loss or destruction of property left by employees in such bath-house. No owner or lessee, its officers or agents, or other person installing such bath-house at its or their mine, or mines, shall be legally liable for the loss or destruction of any property left by its or their employees at or in said bath-house. [G. S. 1915, § 6343.]

§ 299. Penalty for failure of owner, lessee, etc., to comply with provisions of act; each day of such failure to constitute a separate offense; state inspector of mines to have general supervision of this law, etc.; provisions concerning bath-houses already in existence; authority of state inspector. Any owner or lessee, its officers or agents, or other person or persons failing or refusing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined the sum of not less than fifty dollars (\$50) nor more than one hundred

dollars (\$100) for each violation of the provisions of this act. And each day there is a failure to comply with the provisions of this act shall be a separate offense, and punished as such. The state inspector of mines shall have general supervision of this law and the enforcement of the same, and it shall be optional with said inspector of mines to waive the provision of this act as to all bath-houses that have been constructed prior to the taking effect of this act, but said state inspector of mines is hereby given authority to require such bath-houses already in existence to be changed or improved as in his judgment may be necessary. [G. S. 1915, § 6344.]

§ 300. Persons using such bath-house to remove cast-off wearing apparel therefrom; unlawful to commit any nuisance, etc., in such bath-house. It shall be the duty of all persons using said bath-house to remove therefrom all cast-off wearing apparel. It shall be unlawful for any person to in anywise break, injure, or destroy any bath-house or any part or appurtenance thereto, or commit any nuisance therein. [G. S. 1915, § 6345.]

§ 301. Penalty for violation of preceding section. Any person found guilty of any violation of section 6345 of the General Statutes of 1915 (being section 4 of chapter 226 of the Laws of 1913) shall, upon conviction, be fined not less than \$5 nor more than \$10, or by imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment in the discretion of the court. [G. S. 1915, § 6346, as amended by Laws 1917, ch. 241, § 2; May 26.]

"Section 6345 of the General Statutes of 1915," mentioned herein, is § 300, *supra*.

Laws 1913, ch. 226, § 6 (G. S. 1915, § 6347) repealed "all acts and parts of acts in conflict with the provisions of this act."

ARTICLE 3.—Black Powder, Use in Coal Mines.*

§ 302. Unlawful to sell, offer for sale or deliver for use at any coal mine any black powder except in original twenty-five pound packages; delivery of powder to miner.

303. Unlawful to open original package in any manner other than unsealing the seal.

304. Unlawful to take, convey, cause to be conveyed, etc., into coal mine any black powder except as pro-

vided in § 302, *supra*; unlawful to use pick or other metal substance in opening can containing powder.

§ 305. Powder not to be delivered in car hauled by electric motor unless car thoroughly insulated.

306. Penalty for violation of §§ 302, 305, *supra*.

307. Penalty for violation of §§ 303, 304, *supra*.

LAWS OF 1907, CH. 250, AS AMENDED BY LAWS OF 1913, CH. 227.

AN ACT to protect mines, miners and mine laborers, and defining the manner of sale and delivery of black powder for use in coal mines in the state of Kansas, and repealing sections 5045, 5046, 5047, 5048, 5049, 5050 of the General Statutes of 1909, and all laws and parts of laws in conflict with the provisions of this act.

§ 302. Unlawful to sell, offer for sale or deliver for use at any coal mine any black powder except in original twenty-five pound packages; delivery of powder to miner. It shall be unlawful for any individual, firm or corporation to sell, offer for sale or deliver for use at any coal mine or coal mines in the state of Kansas black powder in any manner except in original packages containing twenty-five pounds of powder, said packages to be securely sealed: Said powder to be delivered by the company to the miner at his switch. [G. S. 1915, § 6320.]

Case construing act of 1907:

This act not invalid as a regulation of interstate commerce. *In re Williams*, 79 K. 212. (Affirmed on appeal to supreme court of United States. *Williams v. Walsh*, 222 U. S. 415.)

*See, also, article 1 of this chapter.

§ 303. Unlawful to open original package in any manner other than unsealing the seal. It shall be unlawful for any miner, or mine laborer or other persons, in any coal mine or coal mines, to open an original package of powder in any manner other than unsealing the seal thereof. [G. S. 1915, § 6321.]

§ 304. Unlawful to take, convey, cause to be conveyed, etc., into coal mine any black powder except as provided in § 302, *supra*; unlawful to use pick or other metal substance in opening can containing powder. It shall be unlawful for any miner, mine laborer, or other person or persons, to take, convey, or cause to be conveyed into any coal mine or coal mines in the state of Kansas, black powder in any other manner except as provided in section 1 of this act. It shall be unlawful for any miner, laborer or other persons to use any pick or other metal substance or instrument in opening any can containing powder in the mine. [G. S. 1915, § 6322.]

"Section 1 of this act," mentioned herein, is § 302, *supra*.

§ 305. Powder not to be delivered in car hauled by electric motor unless car thoroughly insulated. No powder shall be delivered by hauling same in any car hauled by an electric motor, unless the car in which the powder is hauled is thoroughly insulated. [G. S. 1915, § 6323.]

§ 306. Penalty for violation of §§ 302, 305, *supra*. Any person, or corporation, or officers or employees of any corporation, violating any of the provisions of section one (1) and four (4) of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined not exceeding \$50 for each offense. [G. S. 1915, § 6324.]

"Section (1) and four (4) of this act," mentioned herein, are §§ 302, 305, *supra*.

§ 307. Penalty for violation of §§ 303, 304, *supra*. Any miner, mine laborer or other person who shall violate the provision of section 2 or 3 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined not exceeding \$10 for each offense. [G. S. 1915, § 6325.]

"Section 2 or 3 of this act," mentioned herein, are §§ 303, 304, *supra*.

ARTICLE 4.—Dynamite and Other Detonating Explosives.*

§308. Dynamite or other detonating explosives not to be used in any coal mine; use of such explosives under rules and regulations agreed upon, and approved by inspector; rules, etc., to be in writing.

§309. Unlawful to direct employees to go into any sinking shaft, etc., after use of dynamite, etc., before removal of all smoke, gases, etc.
310. Penalty for violation of § 308, *supra*.
311. Penalty for violation of § 309, *supra*.
312. Repeal of acts in conflict herewith.

LAWS OF 1909, CH. 175.

AN ACT providing for the protection of life, limb and health of employees in coal mines, and, conservation of coal, by prohibiting the use of dynamite or other detonating explosives, and providing penalties for the violation thereof.

§ 308. Dynamite or other detonating explosives not to be used in any coal mine; use of such explosives under rules and regulations agreed upon, and approved by inspector; rules, etc., to be in writing. It shall be unlawful for any person or persons engaged in coal mining to use or cause to be used dynamite or other detonating explosives in the preparation of any blast or shot in any coal mine within the state of Kansas: *Provided, however,* That dynamite or other detonating explosives may be

*Concerning the storage, handling, etc., of explosives, see ch. 17.

used under such rules and regulations as may be agreed upon between the employer and the employees, same to be approved by the state mine inspector. All rules, regulations and permits to use dynamite or other detonating explosives, as herein provided, shall be in writing. [G. S. 1915, § 6326.]

§ 309. Unlawful to direct employees to go into any sinking shaft, etc., after use of dynamite, etc., before removal of all smoke, gases, etc. It shall be unlawful for any person or persons, firm, corporation or company to direct any of its or their employees to go into any sinking shaft or development work in a coal mine, after shots have been discharged in which dynamite or other detonating explosives have been used, before having removed all smoke, gases or other unsanitary conditions that may have been so created by the use of dynamite or other detonating explosives. [G. S. 1915, § 6327.]

§ 310. Penalty for violation of § 308, *supra*. Any person or persons violating the provisions of section 1 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding twenty-five dollars. [G. S. 1915, § 6328.]

"Section 1 of this act," mentioned herein, is § 308, *supra*.

§ 311. Penalty for violation of § 309, *supra*. Any person, persons, firm, company or corporation violating the provisions of section 2 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars. [G. S. 1915, § 6329.]

"Section 2 of this act," mentioned herein, is § 309, *supra*.

§ 312. Repeal of acts in conflict herewith. Any acts or parts of acts in conflict herewith are hereby repealed. [G. S. 1915, § 6330.]

ARTICLE 5.—Escape-shafts in Coal Mines.

§313. Escape-shafts required in mine worked by or through shaft, slope, or drift, where more than ten miners employed; communication between contiguous mines; escape-shaft, etc., constructed in connection with every vein or stratum of coal worked; approval by secretary of mine industries or mine inspector; time allowed for such construction; second escape-shaft required before more than twenty-five miners employed.

314. Construction of such escape-shaft; construction of stairways in such escape-shaft; traveling ways to be

kept clear of obstructions; stagnant water not to be allowed to accumulate.

§315. Complaint to be made by secretary of mine industries or state mine inspector on failure of owner, etc., to comply with two preceding sections; evidence in such action; owner, operator, etc., failing to comply with said sections guilty of misdemeanor; punishment.

316. Extension of time within which to complete air or escapement shafts required by § 313, *supra*; when work shall commence.

317. Repeal of acts in conflict herewith.

LAWS OF 1899, CH. 165, AS AMENDED BY LAWS OF 1905, CH. 304.

AN ACT providing for the sinking of escape-shafts at coal mines in the state of Kansas, and providing that same be connected with main or hoisting-shaft, and providing a penalty for the violation of this act.

§ 313. Escape-shafts required in mine worked by or through shaft, slope, or drift, where more than ten miners employed; communication between contiguous mines; escape-shafts, etc., constructed in connection with every vein or stratum of coal worked; approval by secretary of mine industries or mine inspector; time allowed for such construction; second escape-shaft required before more than twenty-five miners employed. In all coal mines that are now or which may hereafter be put in operation in

the state of Kansas and which are worked by or through a shaft, slope, or drift, and in which more than ten miners are employed at any one time, if there is not already an escapement-shaft to each and every said mine, or communication between each and every mine and other contiguous mine, then there shall be an escape-shaft or some other communication such as shall be approved by the secretary of mine industries or mine inspector, making at least two distinct means of ingress or egress for all persons employed or permitted to work in such mine. Such escape-shaft or other communication with a contiguous mine aforesaid shall be constructed in connection with every vein or stratum of coal worked in any mine and accessible from every entry, plane or level thereof; and the time to be allowed for such construction shall be four months when such mine is under one hundred feet in depth, and eight months when said mine is over one hundred and not over two hundred feet in depth, and one year for all mines over two hundred feet and under one thousand, and two years for mines over one thousand feet: *Provided*, That not more than twenty-five miners shall be employed in such mine at any one time until a second escape-shaft is constructed in accordance with the laws of this state and approved by the mine inspector: *Provided further*, That nothing in this act shall be construed to affect mines now in operation until the period of limitations for constructing the escape-shafts herein provided for shall have elapsed. [G. S. 1915, § 6312.]

For act extending time within which to complete escape-shafts, see §§ 316, 317, *post*.

For act making the commissioner of labor and industry state mine inspector, see § 165, *ante*.

§ 314. Construction of such escape-shaft; construction of stairways in such escape-shaft; traveling-ways to be kept clear of obstructions; stagnant water not to be allowed to accumulate. Said escape-shaft shall be constructed at least three hundred feet from main or hoisting-shaft or any buildings connected therewith, and said escape-shaft shall be provided with stairways securely fastened so as to bear the combined weight of not less than fifteen men ascending or descending the same. Said stairway shall be so constructed as not to exceed forty-five degrees of elevation by each section of said stairway, and each section shall have substantial guard-rails securely fastened, and the stairways shall be separately partitioned from the parts of such shafts used as upcasts or downcasts, and the traveling-ways between the bottom of main shaft and the escape-shaft or stairway shall be at least five feet in height; said traveling-ways shall be kept clear of all obstructions, and stagnant or standing water shall not be allowed to accumulate in any traveling-way between the upcast and downcast shafts. [G. S. 1915, § 6313.]

§ 315. Complaint to be made by secretary of mine industries or state mine inspector on failure of owner, etc., to comply with two preceding sections; evidence in such action; owner, operator, etc., failing to comply with said sections guilty of misdemeanor; punishment. Whenever the owner, agent or operator of any mine shall neglect, fail or refuse to comply with sections 1 and 2 of this act, it shall be the duty of the secretary of mine industries or state mine inspector, when apprised of this fact, to enter complaint with the county attorney of the county in which such mine or mines are located, and such county attorney shall immediately prosecute said owner, agent or operator of said mine the same as in other cases; and in all prosecutions under this act it shall be conclusive evidence against the party charged if it shall be conclusively proved that said

escape-shaft was not constructed according to the provisions of this act, and within the time heretofore stated. Any owner, operator, agent or lessee who fails to comply with sections 1 and 2 of this act shall be deemed guilty of a misdemeanor, and shall on conviction be fined in a sum not less than five hundred dollars nor more than two thousand dollars, or by imprisonment not less than six months nor more than two years, or by both such fine and imprisonment. [G. S. 1915, § 6314.]

"Sections 1 and 2 of this act," mentioned herein, are §§ 313, 314, *supra*.

Office of secretary of mine industries abolished, commissioner of labor and industry *ex officio* state mine inspector, see §§ 163, 165, *ante*.

LAWS OF 1917, CH. 243.

AN ACT relating to escape shafts in coal mines, and extending the time within which the same may be completed.

§ 316. Extension of time within which to complete air or escapement shafts required by § 313, *supra*; when work shall commence. That in all cases where any coal mine heretofore in operation in this state, with its principal or main shaft of a depth of over one thousand feet, and having no air or escapement shaft other than its main or principal shaft, the time within which to complete such air or escapement shaft, as required by chapter 305 [304] of the Laws of Kansas 1905, page 473, is hereby extended three years from the first day of March, 1917: *Provided*, That work on such escapement shaft shall commence and continue with not less than a double shifting crew within six months after the hoisting of coal from said mine until such escapement shaft has been completed. [Laws 1917, ch. 243, § 1; May 26.]

See note to following section.

§ 317. Repeal of acts in conflict herewith. All acts and parts of acts in conflict with this act are hereby repealed. [Laws 1917, ch. 243, § 2; May 26.]

The foregoing act refers to "chapter 305 of the Laws of Kansas 1905, page 473." The act is very similar to previous acts which have been passed which referred to "chapter 304, Laws of Kansas, 1905, page 473," and extended the time for the completion of the air or escapement shafts required by said chapter. The act of 1917, it will be noted, refers to "chapter 305" instead of "chapter 304." Inasmuch as chapter 304 appears on page 473 of the Laws of 1905 and it is apparent from the terms of the act of 1917 that it was intended to apply to said chapter 304, it is probable that said act of 1917 extends the time within which the air or escapement shafts required by chapter 304 of the Laws of 1905 (§§ 313-315, *supra*) may be completed. Laws 1909, ch. 176, provided an extension of two years from the passage of the act.

Laws 1911, ch. 223, provided an extension of two years from the first day of March, 1911.

Laws 1913, ch. 229, provided an extension of three years from the first day of March, 1913.

Laws 1915, ch. 246, provided an extension of five years from the first day of March, 1915.

ARTICLE 6.—Examining Board, Certification of Miners.

§318. Board of four examiners to be appointed by the governor; qualifications of members; term of office; selection of fifth man to complete board; payment of compensation of members of board.

319. Organization of board by selection of chairman and secretary; duties of secretary; chairman to convene board; publication of notice of meeting at which applicants to be examined.

320. Shot-firers, shot-inspectors, gas men or fire bosses, hoisting engineers, mine foreman or assistant mine

foreman not to be employed unless examined and granted certificates; certificates without examination to certain employees; qualifications of applicants for examination; nature of examinations; age and qualifications required for different positions; fees to be paid by applicants for certificates.

§321. Applicants to whom board shall grant certificates; certificates of mine foremen to be of two grades; examination for certificate of the first grade.

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| <p>§322. Forging, altering or counterfeiting certificate, attempting to secure employment by such certificate or making false representation; misdemeanor.</p> <p>323. Loss or destruction of certificate; secretary to issue duplicate; proof; fee.</p> <p>324. Certificates may be revoked by board of examiners; hearing; notice to holder of certificate; written charges; grounds of complaint; right of holder of canceled certificate to be reexamined.</p> <p>325. Fees paid to state treasurer and</p> | <p>credited to coal mine examiners' fund.</p> <p>§326. Holder of first-grade mine foreman's certificate may serve as foreman, fire boss, shot-firer, or shop-inspector; positions which may be held by holder of second-grade certificate; employment of persons not holding certificates, in emergency; consent of examining board.</p> <p>327. Penalty for violation of act by any owner, operator, lessee or agent of any coal mine in this state.</p> <p>328. Act to apply only to coal mines.</p> |
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LAWS OF 1917, CH. 237.

AN ACT relating to coal mines and mining, creating an examining board, prescribing duties and penalties thereunder.

§ 318. Board of four examiners to be appointed by the governor; qualifications of members; term of office; selection of fifth man to complete board; payment of compensation of members of board. Immediately after the passage of this act there shall be appointed by the governor a board of four examiners to serve until July 1st, 1921, and thereafter such board of examiners shall be appointed for a term of four years. Two of said board shall be practical coal miners, who have had at least five years' experience as miners in the coal mines of Kansas. Two shall be operators of coal mines in the state of Kansas or representatives thereof. The four thus appointed shall select a fifth man to complete said board. The members of the examining board shall be paid out of the coal-mine examiner's fund, upon vouchers to be approved by the president of said board, the sum of \$5 per day for each day of actual service, and their necessary expenses. [Laws 1917, ch. 237, § 1; March 29.]

§ 319. Organization of board by selection of chairman and secretary; duties of secretary; chairman to convene board; publication of notice of meeting at which applicants to be examined. Immediately after their appointment the examiners shall meet and organize by selecting a chairman and secretary. The secretary shall keep on a file all examination questions and their answers and all examination records and papers belonging to the board. The examining board shall convene upon the call of the chairman. Except in cases of emergency, notices of all meetings of the board at which applicants are to be examined shall be published in at least two newspapers of general circulation in each county in which there are coal mines at least five days before the day of meeting. [Laws 1917, ch. 237, § 2; March 29.]

§ 320. Shot-firers, shot-inspectors, gas men or fire bosses, hoisting engineers, mine foreman or assistant mine foreman not to be employed unless examined and granted certificates; certificates without examination to certain employees; qualifications of applicants for examination; nature of examinations; age and qualifications required for different positions; fees to be paid by applicants for certificates. On and after January 1, 1918, no shot-firers, shot-inspectors, gas men or fire bosses, hoisting engineers, mine foreman or assistant mine foreman, shall be employed in any mine in the state of Kansas unless they shall have been examined by the state board of examiners and shall have been granted certificates as hereinafter provided: *Provided*, That men holding positions at the time this act goes into effect shall be granted certificates without examination. Applicants for examination shall be able to read and write the English

language and shall satisfy the board of examiners that they are of good moral character, and not be a user of intoxicating liquors, and shall be citizens of the United States. All applicants shall be thoroughly examined with reference to the duties of the positions for which they have applied for certificates. Applicants for certificates as engineers shall be at least twenty-one years of age. Applicants for certificates as deputy mine inspectors, mine foreman, and assistant mine foreman, shall be at least twenty-five years of age and shall have had at least two years' experience as practical coal miners, mining engineers or men of general underground experience. Applicants for certificates as fire bosses or gas men, shot-firers or shot-inspectors shall have like qualifications and experience in the mines of Kansas or elsewhere, and shall also have had experience in mines that generate explosive and noxious gases. Applicants for certificates as deputy mine inspectors, mine foreman, assistant mine foreman, and hoisting engineers shall before examination pay to the board a fee of \$2, and, if successful a further fee of \$3 for a certificate. Other applicants shall before examination pay to the board of examiners a fee of \$1, and if successful a further fee of \$2 for a certificate. [Laws 1917, ch. 237, § 3; March 29.]

§ 321. Applicants to whom board shall grant certificates; certificates of mine foremen to be of two grades; examination for certificate of the first grade. The board shall grant certificates after examination to all applicants who have shown themselves familiar with the duties of the positions for which they desire certificates and are capable of performing such duties: *Provided*, That certificates of mine foremen shall be of two grades, namely, first grade certificates and second grade certificates. Certificates of the first grade shall be granted only to applicants who by oral and written examinations in the presence of and relating to explosive gas have shown themselves competent to act as mine foremen in mines which generate explosive or noxious gases, and the certificate shall so state. [Laws 1917, ch. 237, § 4; March 29.]

§ 322. Forging, altering or counterfeiting certificate, attempting to secure employment by such certificate or making false representation; misdemeanor. Any person who shall forge, alter or counterfeit a certificate, or shall secure or attempt to secure employment by use of such forged, altered or counterfeit certificate, or shall falsely represent that he is a holder of a certificate, regularly issued to him, shall be guilty of a misdemeanor. [Laws 1917, ch. 237, § 5; March 29.]

§ 323. Loss or destruction of certificate; secretary to issue duplicate; proof; fee. In case of loss or destruction of certificate, the secretary of the examining board, upon satisfactory proof of said loss or destruction, may issue a duplicate thereof on the payment of the sum of \$1. [Laws 1917, ch. 237, § 6; March 29.]

§ 324. Certificates may be revoked by board of examiners; hearing; notice to holder of certificate; written charges; grounds of complaint; right of holder of canceled certificate to be reexamined. All certificates issued hereunder may be revoked by the board of examiners after hearing, upon due notice to the holder of the certificate, and upon written charges preferred by the board or by some interested person for violation of this act. Complaint may be filed against a holder of a certificate for intoxication; mental disability; neglect of duty or other sufficient cause: *Provided, however*, That the holder of the certificate so canceled

shall have the right to appear before the examining board after the expiration of three months, and be reexamined, if he shall first satisfy the board that the incapacity complained of shall have ceased to exist. [Laws 1917, ch. 237, § 7; March 29.]

§ 325. Fees paid to state treasurer and credited to coal mine examiners' fund. All fees collected by said board of examiners shall be paid to the state treasurer and credited to a fund to be known as the coal mine examiners' fund. [Laws 1917, ch. 237, § 8; March 29.]

§ 326. Holder of first-grade mine foreman's certificate may serve as foreman, fire boss, shot-firer, or shot-inspector; positions which may be held by holder of second-grade certificate; employment of persons not holding certificates, in emergency; consent of examining board. Any one holding a first-grade mine foreman's certificate may serve as foreman in any mine, and may serve as fire boss, shot-firer or shot-inspector; and any one holding a second-grade mine foreman's certificate may serve as any of the above, except as fire boss and foreman of mines which generate explosive or noxious gases; and in case of emergency any mine owner, with the consent of the examining board, may employ any trustworthy or experienced man who shall not hold a certificate for a period of not more than thirty days as mine foreman, assistant mine foreman, fire boss, shot-firer or shot-inspector. [Laws 1917, ch. 237, § 9; March 29.]

§ 327. Penalty for violation of act by any owner, operator, lessee or agent of any coal mine in the state. Any owner, operator, lessee, or agent of any coal mine in the state of Kansas violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not exceeding one year or both. [Laws 1917, ch. 237, § 10; March 29.]

§ 328. Act to apply only to coal mines. The provisions of this act shall apply only to coal mines. [Laws 1917, ch. 237, § 11; March 29.]

ARTICLE 7.—Fraudulent Use of Check Numbers.

§329. Unlawful to change, exchange, substitute, alter or remove number or check number on car or pit car with intent to cheat or defraud; unlawful to place number or

check number on any such car for such purpose.

§330. Penalty for violation of preceding section.

LAWS OF 1905, CH. 214.

AN ACT to prohibit the fraudulent use of miners' check numbers in and about mines, and to provide a penalty and punishment therefor.

§ 329. Unlawful to change, exchange, substitute, alter or remove number or check number on car or pit car with intent to cheat or defraud; unlawful to place number or check number on any such car for such purpose. That it shall be unlawful for any person to change, exchange, substitute, alter or remove any number or check number placed upon any car or pit car in or about any mine in the state of Kansas, with the intent to cheat or defraud any other person out of the value of his services in mining and loading the coal or mineral contained in such car or pit car; and it shall be unlawful for any person, with the intent to cheat or defraud another, to place any number or check number upon any car or pit car loaded by any other person in or about any mine. [G. S. 1915, § 6355.]

§ 330. Penalty for violation of preceding section. Every person who shall violate any of the provisions of section 1 of this act shall be deemed

guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not more than one hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment. [G. S. 1915, § 6356.]

"Section 1 of this act," mentioned herein, is § 329, *supra*.

ARTICLE 8.—General Act for Health and Safety of Miners.

(Act of 1883.)

- §331. Owner, agent or operator to make or cause to be made an accurate map or plan of workings of coal mine; scale of such map; copy of map kept in office of coal mine and copy furnished to inspector; plan of progress of workings to be made annually; abandonment of coal mine to be reported to inspector; inspector to have map made if owner fail to file map or if map furnished is believed to be materially inaccurate; cost of such map.
332. Openings in coal mines; construction of such openings; number of persons permitted to work in such mine until such openings constructed; furnace ventilation; speaking tubes and means of signaling; regulations concerning lowering and hoisting persons and machinery therefor; construction of escapement shaft; number of men employed in mine seven hundred feet deep or more designated by state mine inspector.
333. Steam boilers to be provided with steam gauge and water gauge and safety valve; inspection of such boilers; report to mine inspector.
334. Owner, agent or operator of coal mine to maintain ample means of ventilation; requirements; inspector may increase amount of air when necessary; inspection of mine every morning; air-ways to be provided.
335. Employment of inside overseer, called "mining-boss"; duties of mining-boss; travel on underground plane; means of signaling; manholes for places of refuge;

- prop timber to be supplied; mining-boss to measure air current and report to inspector; safety-lamps to be furnished by owner; doors in mines generating explosive gases; boreholes, distance to be kept in advance; boreholes on sides in certain cases.
- §336. Fences about machinery at mines and entrance to abandoned shaft or slope; fences around top of shaft and landing; gates or bars to be kept closed; traveling-way in side of hoisting-shaft.
337. Right of action to accrue for injury or damage to person or property occasioned by violation of act or failure to comply with provisions; right of action when death ensues.
338. Duties of inspector of mines; examination of mines; record of such examinations; coal operators to make quarterly statements to inspector; matters contained in annual report of inspector.
339. Notice to inspector when loss of life or serious accident results from explosion or other accident; notice to coroner when any person killed; duty of inspector to investigate; investigation by inspector when results do not require coroner to investigate; attendance of witnesses; costs of such investigation.
340. Penalty for neglect or refusal to comply with §§ 331-336, *supra*; application of penalties recovered.
341. "Owner," "owners," "lessee," "agent," or "operator," as used in this act, defined.
342. Repeal of acts in conflict herewith.

LAWS OF 1883, CH. 117, AS AMENDED BY LAWS OF 1885, CH. 143, AND LAWS OF 1889, CH. 174.

AN ACT to provide for the health and safety of persons employed in and about the coal mines of Kansas, and providing for the inspection of the same.

§ 331. Owner, agent or operator to make or cause to be made an accurate map or plan of workings of coal mine; scale of such map; copy of map kept in office of coal mine and copy furnished to inspector; plan of progress of workings to be made annually; abandonment of coal mine to be reported to inspector; inspector to have map made if owner fail to file map or if map furnished is believed to be materially inaccurate; cost of such map. That the owner, agent or operator of every coal mine shall make or cause to be made within six months after the passage of this act an accurate map or plan of the workings of such coal mine, and each and every vein thereof, on a scale not exceeding one hundred feet to the inch, and showing the bearings and distances, which shall be kept in the office

of such coal mine; and it shall be the duty of the owner, agent or operator of such coal mine to furnish the state inspector with a true copy of said map or plan, the same to be deposited at his office. And such owner, agent or operator shall cause, on or before the 10th day of July of each year, a plan of the progress of the workings of such coal mine during the year past to be marked on the original map or plan of the said coal mine, and the inspector shall correct his map or plan of said workings in accordance with the above plan or map thus furnished. And when any coal mine is worked out or abandoned the fact shall be reported to the inspector, and the map or plan of such coal mine in his office shall be carefully corrected and verified: *Provided*, If the owner, agent or operator of any coal mine shall neglect or refuse, or for any cause fail, for the period of two months after the time prescribed, to furnish the said map or plan as hereby required, or if the inspector shall find or have reason to believe that any map or plan of any coal mine furnished in pursuance of this act is materially inaccurate or imperfect, he is hereby authorized to cause a correct map or plan of the actual workings of said coal mine to be made at the expense of the owner, agent or operator thereof, the cost of which shall be recovered from said owner, agent or operator as other debts are recoverable by law: *Provided*, That if the map or plan which the inspector claimed to be incorrect shall prove to have been correct, then the afore-said expense shall be paid by the inspector. [G. S. 1915, § 6272.]

§ 332. Openings in coal mines; construction of such openings; number of persons permitted to work in such mine until such openings constructed; furnace ventilation; speaking tubes and means of signaling; regulations concerning lowering and hoisting persons and machinery therefor; construction of escapement shaft; number of men employed in mine seven hundred feet deep or more designated by state mine inspector. It shall not be lawful, after six months from the passage of this act, for the owner, agent or operator of any coal mine to employ any person at work within said coal mine, or permit any person to be in said coal mine for the purpose of working therein, unless they are in communication with at least two openings, separated by natural strata of not less than eighty feet in breadth if the mine be worked by shaft or slope, and if worked by drift not less than fifty feet: *Provided, however*, That such coal mine shall not exceed one hundred feet in depth from the surface to the coal; and for every additional one hundred feet or fractional part thereof six months' additional time will be granted; but in all cases the number of men shall be limited not to exceed twenty-five until the second opening is perfected and made available; and a roadway to the same shall be kept open, not less than three feet high and four feet wide, thereby forming a communication as contemplated in this act, but the limit herein prescribed as to the number working in the shaft before the completion of the second opening shall not apply to mines exceeding seven hundred feet in depth. And for a failure to do as provided in this section, the owner, agent or operator shall be subject to the penalty provided for in section sixteen of this act. And in case of furnace ventilation being used before the second opening is reached, the furnace shall not be within forty feet of the foot of the shaft, and shall be secured from danger from fire by brick or stone walls of sufficient thickness; and the flues shall be composed of incombustible material to an extent of not less than thirty feet from the furnace and the mine while being driven for making or perfecting a second opening. In all cases where the human voice cannot be

distinctly heard, the owner, agent or operator shall provide and maintain a metal tube from the top to the bottom of the shaft or slope, suitably adapted to the free passage of sound, through which conversation may be held between persons at the bottom and top of such shaft or slope; and there shall also be maintained the ordinary means of signaling to and from the top and bottom of such shaft or slope. In all mines of one hundred feet in depth or over from the surface of the ground an improved safety-catch shall be used, and sufficient horns or flanges shall be attached to the sides of the drum of every machine that is used for lowering or hoisting persons into and out of said mine where steam is used, and adequate brakes shall be attached thereto. The main link attached to the swivel of the wire rope shall be made of the best quality of iron, and shall be tested by weights or other means satisfactory to the inspector of mines of the state; and bridle-chains shall be attached to the main link from the cross-pieces of the cage, and no single-link chain shall be used for lowering or raising persons into or out of said mine; and not more than six persons shall be lowered or hoisted by the machinery at any one time; and only sober, competent and experienced engineers shall be employed, and said engineer shall have attained at least the age of eighteen years; and on no account shall any coal be hoisted, or timber or any other material sent up or down, or empty cars, while persons are descending into or ascending out of said mine. In all coal mines hereafter opened or that shall hereafter go into operation in the state, the owner thereof, or owners, lessee, agent or operator, shall construct such escapement-shaft as is now required by law in this state, at the rate of fifty feet every six months until such escapement-shaft shall have been fully completed; and until such escapement-shaft is fully completed and connected with the main shaft, it shall be unlawful to work over twenty-five men in said mine: *Provided further*, That the number of men to be employed in any mine seven hundred feet deep or more prior to the time when a second or air shaft is sunk, shall be designated by the state mine inspector after a careful examination of all the conditions as to the safety and health of the men in the mines. [G. S. 1915, § 6273.]

§ 333. Steam boilers to be provided with steam gauge and water gauge and safety valve; inspection of such boilers; report to mine inspector. Every steam boiler used in or around the coal mines of this state shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and to be also provided with a proper safety-valve; and the owner, agent or operator shall have the said boiler or boilers examined and inspected by a competent boiler-maker or other qualified person once in every six months, and the result of every examination shall be certified in writing, and conveyed to the mine inspector to be filed in the records of his office. [G. S. 1915, § 6274.]

§ 334. Owner, agent or operator of coal mine to maintain ample means of ventilation; requirements; Inspector may increase amount of air when necessary; inspection of mine every morning; air-ways to be provided. The owner, agent or operator of every coal mine, whether shaft, slope or drift, shall within six months after the passage of this act provide and thereafter maintain for every such mine ample means of ventilation, affording 100 cubic feet of air per minute per person in all mines where the coal strata are three feet thick or over, and a proportionate amount for thinner strata, which shall be circulated wherever any person

or persons may be working in said mine. The inspector may increase the amount when necessary, to such an extent as will dilute, carry off and render harmless the noxious gases generated therein; and all mines generating fire-damp shall be kept free of standing gas, and every working-place shall be carefully examined every morning with a safety-lamp by a competent person, before any workman is allowed to enter therein; and it shall be the duty of the owner, agent or operator of every coal mine to provide and maintain air-ways of sufficient dimension to supply the requisite amount of air. [G. S. 1915, §6275.]

Section applicable to all mines generating gas in appreciable quantities. *Cheek v. Railway Co.*, 89 K. 247; *Ward v. Fuel Co.*, 94 K. 626.

§ 335. Employment of inside overseer, called "mining-boss"; duties of mining-boss; travel on underground plane; means of signaling; manholes for places of refuge; prop timber to be supplied; mining-boss to measure air current and report to inspector; safety-lamps to be furnished by owner; doors in mines generating explosive gases; boreholes, distance to be kept in advance; boreholes on sides in certain cases. In order to better secure the proper ventilation of every coal mine and promote the health and safety of the persons employed therein, the owner, agent or operator shall employ a competent and practical inside overseer, to be called "mining-boss," who shall keep a careful watch over the ventilating apparatus, the air-ways, traveling-ways, pumps and pump timbers and drainage, and shall see that as the miners advance their excavations all loose coal, slate and rock overhead are carefully secured against falling in upon the traveling-ways. And every underground plane on which persons travel, worked by self-acting pulleys, engines, windlasses or machinery of whatever description, shall be provided with proper means of signaling between the stopping-places and the ends of the plane; and shall furthermore be provided in every case, at intervals of not more than thirty feet, with sufficient manholes for places of refuge. And every road on which persons travel underground where the coal is drawn by mules or other animals, shall be provided at intervals of not more than sixty feet with sufficient manholes for places of refuge. And every mine shall be supplied with sufficient prop timber of suitable length and size for the places where it is to be used, and kept in easy access to. And it shall also be the duty of the mining boss to measure the air current at least once per week at the inlet and outlet, and at the face of the workings, and keep a record of such measurements, and report the same to the inspector of the state once in every month. The safety-lamps used for examining the mines, or which may be used for working therein, shall be furnished by and be the property of the owner of said mines, and shall be in charge of the agent of such mine. And in all mines generating explosive gases the doors used in assisting or directing the ventilation of the mine shall be so hung and adjusted that they will close themselves, or be supplied with springs or pulleys so they cannot be left standing open; and boreholes shall be kept not less than twelve feet in advance of the face of every working-place, and when necessary, on the sides, if the same is driven toward and in dangerous proximity to an abandoned mine suspected of containing inflammable gases, or which is inundated with water. [G. S. 1915, § 6276.]

Overseer must see that rock overhead is carefully secured. *Barrett v. Dessy*, 78 K. 642; *Little v. Norton*, 83 K. 232; *Ozorkiewicz v. Carr*, 83 K. 473.

Obligation to drill boreholes not discharged by order to drill. *Cheek v. Railway Co.*, 89 K. 247.

Judicial notice that abandoned mines generate gas. *Cheek v. Railway Co.*, 89 K. 247. Liability of company not shifted by negligence of untrustworthy employee. *LeRoy v. Railway Co.*, 91 K. 548.

This section in effect debars the defense of contributory negligence. *Baisdrengghien v. Railway Co.*, 91 K. 730.

Jurisdiction as between state and federal courts. *Baisdrengghien v. Railway Co.*, 91 K. 730.

Company is bound to furnish props of serviceable dimensions. *Ricci v. Mining Co.*, 92 K. 349.

Prop timber one-half mile away not a compliance with requirement. *Henry v. Railway Co.*, 97 K. 682.

Failure to provide manholes held not proximate cause of injury. *Oplotnik v. Mining Co.*, 98 K. 356.

Father may bring action for loss of services resulting from injuries received by minor son caused by failure of defendant to provide sufficient prop timber. *Henry v. Railway Co.*, 98 K. 567.

Whole of room in which coal miner works is his working place, and no part of it is a traveling-way within the meaning of this section. *Ricardo v. Coal & Coke Co.*, 100 K. 95.

Duty of coal miner to prop the room and make it safe before commencing to mine coal therefrom, considered; rule where part of room has been previously worked out by another miner. *Ricardo v. Coal & Coke Co.*, 100 K. 95.

§ 336. Fences about machinery at mines and entrance to abandoned shaft or slope; fences around top of shaft and landing; gates or bars to be kept closed; traveling-way in side of hoisting-shaft. All machinery about mines and the entrance of every abandoned shaft or slope shall be properly fenced off, and the top of each shaft and each landing of the same shall be fenced around with a fence not less than three feet high on every side except the side or sides used for loading and unloading the cages, and this side or sides shall have gates or bars, which shall be kept closed at all times except during the active use of the cages at these places; and there shall be cut in the side of every hoisting-shaft at the bottom thereof a traveling-way sufficiently high and wide to enable persons to pass the shaft in going from one side of the mine to the other without passing over or under the cages or other hoisting apparatus. [G. S. 1915, § 6277.]

§ 337. Right of action to accrue for injury or damage to person or property occasioned by violation of act or failure to comply with provisions; right of action when death ensues. For any injury to person or property occasioned by any violation of this act, or any willful failure to comply with its provisions by any owner, lessee or operator of any coal mine or opening, a right of action against the party at fault shall accrue to the party injured for the direct damage sustained thereby; and in any case of loss of life by reason of such violation or willful failure, a right of action against the party at fault shall accrue to the widow and lineal heirs of the person whose life shall be lost for like recovery of damages for the injury they shall have sustained. [G. S. 1915, § 6280.]

Jury should determine facts which constitute the violation. *Ozorkiewicz v. Carr*, 83 K. 473. Actions prosecuted by widow when no personal representative appointed. *Cheek v. Railway Co.*, 89 K. 247; *Frere v. Railway Co.*, 94 K. 57.

"Any violation" of act and "willful failure" to comply, construed. *Cheek v. Railway Co.*, 89 K. 247.

Willful violation; contributory negligence; demand by miner not required. *Le Roy v. Railway Co.*, 91 K. 548.

When action should be brought under workmen's compensation act. *Frere v. Railway Co.*, 94 K. 57.

Father may bring action for loss of services resulting from injuries received by minor son caused by failure of defendant to provide sufficient prop timber. *Henry v. Railway Co.*, 98 K. 567.

§ 338. Duties of inspector of mines; examination of mines; record of such examinations; coal operators to make quarterly statements to inspector; matters contained in annual report of inspector. The inspector of mines shall devote the whole of his time to the duties of his office. It shall be his duty to examine each mine in the state as often as possible, and at least twice each year, to see that all provisions of this act are ob-

served and strictly carried out; and he shall make a record of all examinations of mines, showing the condition in which he finds them, the number of persons employed in and about each mine, the extent to which the law is obeyed, the progress made in the improvements sought to be secured by the passage of this act, the number of accidents and deaths resulting from injuries received in the mines, and all other facts of public interest concerning the condition and progress of mining in this state. In order to facilitate the inspector in his duties, it shall be the duty of all coal operators to make quarterly statements to the inspector of the amount of coal mined, and the number of miners and other persons employed around the mines each quarter. The inspector's record and all matters concerning the coal-mining business of public interest shall be embodied in the inspector's annual report made to the governor on the first day of February each year. [G. S. 1915, § 6281.]

The commissioner of labor and industry is *ex officio* state mine inspector, see § 165, *ante*.

Neglect of mine inspector no excuse for negligence of owner. *Cheek v. Railway Co.*, 89 K. 247.

§ 339. Notice to inspector when loss of life or serious accident results from explosion or other accident; notice to coroner when any person killed; duty of inspector to investigate; investigation by inspector when results do not require coroner to investigate; attendance of witnesses; costs of such investigation. Whenever by reason of any explosion or other accident in any coal mine, or the machinery connected therewith, loss of life or serious personal injury shall occur, it shall be the duty of the person having charge of such coal mine to give notice thereof forthwith to the inspector, and if any person is killed thereby, to the coroner of the county, who shall give due notice of the inquest to be held. It shall be the duty of the inspector upon being notified as herein provided to immediately repair to the scene of the accident, and make such suggestions as may appear necessary to secure the future safety of the men; and if the results of the explosion do not require an investigation by the coroner, he shall proceed to investigate and ascertain the cause of the explosion or accident, and make a record thereof, which he shall file as provided for; and to enable him to make the investigation, he shall have power to compel the attendance of persons to testify, and to administer oaths or affirmations. The cost of such investigation shall be paid by the county in which the accident occurred, in the same manner as costs of inquests held by the coroner or justices of the peace are paid. [G. S. 1915, § 6282.]

§ 340. Penalty for neglect or refusal to comply with §§ 331-336, *supra*; application of penalties recovered. Any owner or owners, lessee, agent or operator of any coal mine who shall neglect or refuse to comply with sections one, two, three, four, five, six and eight of this act, shall be deemed guilty of a misdemeanor, and subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment. All penalties recovered under this act shall be applied, in the county in which the fine is collected, to the support of common schools. [G. S. 1915, § 6283.]

Section 6284 of the General Statutes of 1915 relates to the employment of minors in coal mines. The provisions of the section have been superseded by later acts relating to child labor, which will be found in chapter 8, *ante*.

§ 341. "Owner," "owners," "lessee," "agent," or "operator," as used in this act, defined. The terms "owner," "owners," "lessee," "agent," or

"operator," as used in this act, shall include the immediate proprietor, lessee or occupier of any coal mine, or any person having on behalf of any owner or owners or lessee as aforesaid the care and management of any coal mine, or any part thereof. [G. S. 1915, § 6285.]

§ 342. Repeal of acts in conflict herewith. All acts or parts of acts in conflict with any of the provisions of this act are hereby repealed. [G. S. 1915, § 6286.]

ARTICLE 9.—General Act for Health and Safety of Miners.

(Act of 1897.)

§343. Break-throughs required in mines operated by system of room and pillar; distance between break-throughs.

344. Width and height of such break-throughs; area of air-courses; compensation for making same; operations to cease until break-throughs perfected; filling of break-throughs as other break-throughs are made; repair of break-throughs partly open or torn down.

345. Ventilation of mines mentioned in § 343, *supra*; air to be split in four currents; amount of air to be supplied for each person; openings to abandoned portions of mine to be securely gobbled and blocked off; not lawful to use furnace for ventilation where explosive gases are germinated.

346. Inspector may increase volume of air when required to carry off noxious gases; mines generating fire-damp to be kept free of standing gas; examination of such mines every morning; record to be made by examiner; proof of inspection; notify miners in case of danger; fire-damp to be diluted and rendered harmless.

347. Owner, etc., to case-line, etc., where natural strata are not safe; stairways in escapement-shafts; traveling ways between bottom of main shaft and escapement-shaft; standing water not to be allowed to accumulate; means of hoisting to be kept ready at all times where stairways cannot be conveniently constructed.

348. Duty of foreman, cager, etc., or person in charge of bottom of shaft, when any six employees ready to ascend; empty cage; manholes to be provided on underground roads.

349. Air-ways to be provided and maintained; area of air-courses in mines operated on room-and-pillar system.

350. Stagnant water not to be permitted to remain in air-courses, etc.; ob-

structions not to be placed in cross-cuts, rooms, etc., used as air-ways; duty of mine-bosses in case of fall of roof or where sides of air-ways cave in.

§351. Air-ways to be examined twice each week; report of such inspection to be forwarded to state inspector once each month.

352. Mines where coal-dust, etc., may accumulate to be sprinkled or saturated once a day or oftener.

353. Trap-doors or air-gates not to be left open longer than while passing through; mine-boss to be notified when brattice-cloth torn down; same to be replaced.

354. Coal operators, coal companies, etc., to make quarterly report to inspector of mines; matters to be reported in such reports; inspector to furnish blanks.

355. Lard oil only to be used for lighting purposes; exception.

356. Inspector to have right to enter any coal mine; inspector to notify owners, etc., of discovery of any violation of this act and the penalty imposed; proceedings to be instituted when notice disregarded; duty of inspector where such delay might jeopardize life or limb; order mine to be put in reasonably safe condition or work suspended; penalty for failure to comply with such order; permission of inspector to resume work; owner, etc., may bring action to enjoin inspector from enforcing such order; when injunction granted; service of notice on inspector.

357. Inspector authorized to furnish printed copies of act; copy to be posted; duty of mine-boss, etc., to call attention of miners to provisions of act.

358. Penalty for noncompliance with §§ 343-358, *supra*, by owners, etc., or miner or other employee; act construed to apply only to coal mines, etc.

359. Repeal of Laws of 1895, ch. 171, and acts in conflict herewith.

LAWS OF 1897, CH. 159, AS AMENDED BY LAWS OF 1901, CH. 257, AND LAWS OF 1907, CH. 251.

AN ACT to provide for the health and safety of persons employed in mines, and supplementary to and amendatory of chapter 66a, General Statutes of 1899, and repealing chapter 171, Session Laws of 1895, and providing penalty for violation of the same.

§ 343. Break-throughs required in mines operated by system of room and pillar; distance between break-throughs. It shall be unlawful for

any mine owner, agent, lessee or operator of any coal mine, or any other underground workings where any kind of material is mined or excavated, in either shaft mine, slope mine, or drift mine, by system of room and pillar, to mine or cause to be mined by any employee therein, in any of said mines, any minerals mined by bushel, ton or other rates, to excavate coal or other minerals in an advance space of forty feet, unless break-throughs are made, ranging in distance as follows: Forty feet shall constitute the distance between break-throughs, which shall be made through the pillar which divides either rooms, air-courses or entries, where any of said rooms, air-courses or entries are in operation, and in no case shall the distance exceed the aforesaid distance, namely, forty feet, irrespective of thickness or distance of the pillar or pillars which divide such rooms, air-courses or entries. [G. S. 1915, § 6292.]

This act construed. *Schmalstieg v. Coal Co.*, 65 K. 753.

§ 344. Width and height of such break-throughs; area of air-courses; compensation for making same; operations to cease until break-throughs perfected; filling of break-throughs as other break-throughs are made; repair of break-throughs partly open or torn down. Said break-throughs shall be at least six feet wide and the full height of coal strata or other minerals mined which do not exceed six feet in height, and in no case shall the air-courses have less than twenty-one feet of an area, where mines are operated on room-and-pillar system. And the compensation for making such break-throughs shall be regulated by or between the employer and employee; and any room, air-course or entry, or any other working-places where miners or others are employed, shall cease operations at the working-faces until said break-throughs are perfected as herein specified in section one of this act. And said break-throughs shall be filled with either slate-rock, or closed by brattice, to make the same air-tight, as soon as the second or succeeding break-throughs are made. And in any case any of such break-throughs are partly opened or torn down by the concussion of shots or blasts, or by premature explosion or otherwise, the foreman or superintendent or agent in each or any of the said mines shall immediately cause any of such break-throughs to be properly closed and made air-tight, as soon as notified by any employee. [G. S. 1915, § 6293.]

§ 345. Ventilation of mines mentioned in § 343, supra; air to be split in four currents; amount of air to be supplied for each person; openings to abandoned portions of mine to be securely gobbed and blocked off; not lawful to use furnace for ventilation where explosive gases are germinated. Every mine owner, agent, superintendent, lessee or operator of coal mines or underground workings of the character mentioned in section 1 of this act shall provide and maintain, for every mine under his direction, management, or control, ample means of ventilation, providing a constant and adequate supply of pure air to every person working in such mine. On and after October 1, 1901, as to every mine already in operation, and from and after the expiration of six months next after the opening of any new mine hereafter for operation, said air shall be split into at least four separate currents, so as to give a full and separate current of air to each quarter-section of the mine, and so as to supply to every person working in the mine at his working-place at least one hundred cubic feet of pure air per minute. All openings to worked-out or abandoned portions of every operated mine shall be securely gobbed and

blocked off from the operated portions thereof, so as to protect every person working in such mine from all danger that can be caused or produced by such worked-out or abandoned portions of said mines. It shall not be lawful to use a furnace for the purpose of ventilating any mine in which explosive gases are germinated. [G. S. 1915, § 6294.]

"Section 1 of this act," mentioned herein, is § 343, *supra*.

Duty is upon mine owner to provide proper ventilation. *Schmalstieg v. Coal Co.*, 65 K. 753; *Ward v. Fuel Co.*, 94 K. 626.

§ 346. Inspector may increase volume of air when required to carry off noxious gases; mines generating fire-damp to be kept free of standing gas; examination of such mines every morning; record to be made by examiner; proof of inspection; notify miners in case of danger; fire-damp to be diluted and rendered harmless. The inspector of mines shall cause the volume of air to be increased when necessary to such an extent as will dilute, carry off and render harmless the noxious gases generated therein. And mines generating fire-damp shall be kept free of standing gas, and every working-place shall be carefully examined every morning with a safety-lamp by an examiner or fire-boss before miners or other employees enter their respective working-places. Said examiner or fire-boss shall register the day of the month at the place of the workings, and also on top, in a book which shall be kept in the weighmaster's office for such special purpose; and as proof of inspection, he shall daily record all places examined in said book, and in case of danger where fire-damp may have accumulated during the absence of any person or persons employed therein, said examiner or fire-boss must notify the miners or those employed therein, or those who may have occasion to enter such places. And the hydrogen or fire-damp generated therein must be diluted and rendered harmless before any person or persons enter such working or abandoned part of the mine with a naked light. [G. S. 1915, § 6295.]

Section applicable to all mines generating gas in appreciable quantities. *Cheek v. Railway Co.*, 89 K. 247.

Mines must be free from standing gas. *Ward v. Fuel Co.*, 94 K. 626.

Company not relieved of liability unless proper inspection was made. *Hartman v. Dickinson*, 95 K. 435.

§ 347. Owner, etc., to case-line, etc., where natural strata are not safe; stairways in escapement-shafts; traveling-ways between bottom of main shaft and escapement-shaft; standing water not to be allowed to accumulate; means of hoisting to be kept ready at all times where stairways cannot be conveniently constructed. It shall be the duty of the owner, lessee or operator of any mine where the natural strata are not safe in or around all workings, pumping- and escaping-shafts, to securely case-line or otherwise make said places secure, and all escapement-shafts shall be provided with stairways securely fastened, so as to bear the combined weight of not less than fifteen men ascending or descending the same. Said stairways shall be so constructed as not to exceed forty-five degrees of elevation by each section of said stair, and each section shall have substantial guard-rails securely fastened, and the stairways shall be separately partitioned from the parts of such shafts used as upcasts or downcasts, and the traveling-ways between the bottom of the main shaft and the escaping-shaft or stairways shall be at least five feet in height. Said traveling-ways shall be kept clear of all obstructions, and standing or stagnant water shall not be allowed to accumulate in any traveling-way between the upcast and downcast shafts. And in case of mine shafts which are over one hundred and fifty feet in depth, where stairways can-

not be conveniently constructed, other safe means of hoisting the persons employed in any such mine must be kept ready at all times, so as to be available in case of accident to the regular hoisting-shaft or machinery in use at the same. [G. S. 1915, § 6296.]

§ 348. Duty of foreman, cager, etc., or person in charge of bottom of shaft, when any six employees ready to ascend; empty cage; manholes to be provided on underground roads. It shall be the duty of the foreman, cager, or whosoever may have charge of the bottom of any shaft, to give the proper signal to the top-man and engineer whenever any six employees who work therein are ready to ascend, by day or night, and for the making of such ascent it shall be the duty of the bottom cager to give them an empty cage by which they can ascend. And every road on which persons travel underground when the coal is drawn by mules, or other powers, shall be provided at intervals of not more than thirty feet with sufficient manholes for places of refuge. [G. S. 1915, § 6297.]

§ 349. Air-ways to be provided and maintained; area of air-course in mines operated on room-and-pillar system. It shall be the duty of the owner, lessee or operator of every mine to provide and maintain air-ways of sufficient dimensions, and in no case shall the area of the air-course be less than twenty-one feet in mines operated on room-and-pillar system. [G. S. 1915, § 6298.]

§ 350. Stagnant water not to be permitted to remain in air-courses, etc.; obstructions not to be placed in cross-cuts, rooms, etc., used as air-ways; duty of mine-boss in case of fall of roof or where sides of air-ways cave in. Standing or stagnant water shall not be allowed to remain in air-courses, entries, traveling-ways, or rooms. Obstructions of any kind must not be placed in cross-cuts, rooms or entries used as air-ways. And in case of a fall of roof, or where the sides of such air-ways cave in, it shall be the duty of the mine-boss or agent in any such mines to cause such falls or obstruction to be removed immediately and the roof and sides made secure. [G. S. 1915, § 6299.]

§ 351. Air-ways to be examined twice each week; report of such inspection to be forwarded to state inspector once each month. All main air-ways in any of the underground workings in the state of Kansas shall be examined at least twice a week by the mine-boss or agent, or some other competent person so directed by said mine-boss or agent; and a report of such inspection shall be forwarded to the office of the state inspector of mines at least once a month. [G. S. 1915, § 6300.]

§ 352. Mines where coal-dust, etc., may accumulate to be sprinkled or saturated once a day or oftener. It shall be the duty of the mine-boss or agent in charge of any mine where coal-dust or any other inflammable ingredients may accumulate, to cause the same to be properly sprinkled or saturated once a day, and oftener if necessary, in either air-courses, entries, rooms, or cross-cuts. [G. S. 1915, § 6301.]

§ 353. Trap-doors or air-gates not to be left open longer than while passing through; mine-boss to be notified when brattice-cloth torn down; same to be replaced. No employee or other person in mines is allowed to leave trap-doors or air-gates open any longer than while passing through said gates or doors. And any person who accidentally or otherwise tears down any brattice-cloth must immediately notify the mine-boss or the individual having supervision of the air in such mine, and the same must be replaced as soon as notice thereof is given to the mine-boss or person in charge of the air. [G. S. 1915, § 6302.]

§ 354. Coal operators, coal companies, etc., to make quarterly report to inspector of mines; matters to be reported in such reports; inspector to furnish blanks. In order to facilitate the inspector of mines in his duties, it shall be the duty of all coal operators and coal companies or lessees or other persons engaged in mining or producing coal to make a quarterly statement to the mine inspector of the amount of all coal mined, the number of miners employed, number of day men, number of boys, and all other persons employed in or around said mine or mines, not later than ten days after the end of each quarter; and they shall also state the price paid miner per ton or bushel, the price paid to day hands per day, the number of days worked by miners and by day men, the number of accidents, and deaths resulting from injuries in and around the said mine or mines. It shall also be the duty of the mine inspector to furnish all coal operators and all coal companies or lessees or other persons engaged in mining or producing coal, with printed blank forms every quarter, for the purpose of making out said report as this act herein provides for. [G. S. 1915, § 6303.]

§ 355. Lard oil only to be used for lighting purposes; exception. No person employed in any mine shall use any kind of oil other than lard oil for lighting purposes, except when repairing downcast or upcast shafts. [G. S. 1915, § 6304.]

§ 356. Inspector to have right to enter any coal mine; inspector to notify owners, etc., of discovery of any violation of this act and the penalty imposed; proceedings to be instituted when notice disregarded; duty of inspector where such delay might jeopardize life or limb; order mine to be put in reasonably safe condition or work suspended; penalty for failure to comply with such order; permission of inspector to resume work; owner, etc., may bring action to enjoin inspector from enforcing such order; when injunction granted; service of notice on inspector. That the state mine inspector may be enabled to perform the duties here imposed upon him, he shall have the right at all times to enter any coal mine to make examination or obtain information. If, in any coal mine or underground workings of the character mentioned in section 1 of this act, or in any portion of such mine or workings, because of improper or inadequate ventilation, the presence of stagnant or noxious or explosive gases, inadequate or improper air-ways or air-gates, or the use or presence, with the knowledge, connivance or consent of the operator or person in active charge of said mine, for illuminating purposes, of oil other than lard, or other equally safe first-class oil, lack of adequate and lawful stairways break-throughs, or man-holes, or for any other reasons within the power of the operator, owner or lessee, by the exercise of ordinary care, to remove or guard against, or cause to be removed or guarded against, be or become injurious to the health or dangerous to the lives or limbs of persons working in such mine or part of mine, the state mine inspector shall notify the owners, lessees or agents, immediately, of the discovery of any violation of this act, and of the penalty imposed thereby for such violation, and in case of such notice being disregarded for the space of ten days, he shall institute prosecution against the owner, owners, lessees or agents of the mine, under the provisions of section 16, chapter 159, Laws of 1897. In any case, however, where in the judgment of such inspector delay may jeopardize life or limb, he shall at once proceed to the mine where the alleged danger exists and examine into the matter, and if after full investigation thereof he shall be of the opinion that there

is immediate danger of life or limb by reason of the unsafe condition of said mine or some part thereof, he shall immediately order the owner, lessee, operator, agent, manager, superintendent or person in charge of the mine to forthwith repair and put in reasonably safe condition such dangerous mine or part of mine, or suspend all work in and about such mine or parts of mine found to be in fact dangerous to life or limb; and in the event that said owner, lessee, operator, agent, manager, superintendent or person in charge of the mine fails to use due diligence in causing the repairs so ordered to be made in the time specified by said mine inspector, then said mine inspector shall order the owner, lessee, operator, agent, manager, superintendent or person in charge of the mine to immediately suspend all work in and about such mine or parts of mine found to be in fact dangerous to life or limb; and if the owner, lessee, operator, agent, manager, superintendent or other person in charge of the mine shall refuse or neglect to comply with such order, when such mine or some part thereof is in fact dangerous to the life or limb of parties working therein, and forthwith repair or suspend all work in and about such mine or parts of mine so found to be in fact dangerous, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding four hundred dollars. Work in and about such mine or parts of mine so found to be dangerous shall not be resumed until permission of the inspector is first obtained, unless by order of some court of competent jurisdiction. In case of the inspector making such order, the owner, operator, superintendent or other person in charge of such mine may bring an action in any court of competent jurisdiction to enjoin the inspector from interfering with the operation of the mine, but no injunction shall be granted upon such application without twenty-four hours' notice to the inspector, and a hearing upon such application. Said notice may be personally served upon said inspector or his deputy, if found in the country [county], but if said inspector or his deputy cannot be found in the country [county] where said action is commenced, then notice or summons may be served [on] said inspector by placing a certified copy thereof, securely sealing, stamping, addressing and mailing same to said inspector, at the post office nearest the mine sought to be closed by said inspector; and a return of the sheriff, showing service of notice or summons cannot be served on the inspector or his deputy in said county, shall be sufficient grounds upon which to obtain service by mailing same as above provided. [G. S. 1915, § 6305.]

"Section 1 of this act," mentioned herein, is § 343, *ante*.

"Section 16, chapter 159, Laws of 1897," referred to herein, is § 358, *post*.

§ 357. Inspector authorized to furnish printed copies of act; copy to be posted; duty of mine-boss, etc., to call attention of miners to provisions of act. The inspector is hereby authorized to furnish every mine owner, agent, lessee or operator of every mine which he knows to be in operation, with a printed copy of this act, which shall be kept conspicuously posted at or near the top of any of said mines, and it shall be the duty of the mine-boss or agent in charge to call the attention of the miners or others employed to the provisions of this act. [G. S. 1915, § 6306.]

§ 358. Penalty for noncompliance with §§ 343-357, *supra*, by owners, etc., or miner or other employee; act construed to apply only to coal mines, etc. In case of noncompliance with sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this act by any owner, operator, agent or lessee

of any mine, or any miner or other employee working therein; upon whom any duty is cast by any of said sections, he shall be deemed guilty of a misdemeanor, and shall upon conviction of the same, for each offense be punished by a fine of not less than one hundred dollars and not to exceed three hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days and not to exceed ninety days, or by both such fine and imprisonment, in any court having competent jurisdiction: *Provided*, That this act shall be construed as to affect or apply only to coal mines of this state, or any person or persons operating or owning such coal mines. [G. S. 1915, § 6307.]

Sections 1-15, mentioned herein, are §§ 343-357, *supra*.

§ 359. Repeal of Laws of 1895, ch. 171, and acts in conflict herewith. And chapter 171, Session Laws of 1895, and all other acts and parts of acts in conflict with this act, are hereby repealed. [G. S. 1915, § 6308.]

ARTICLE 10.—Lead and Zinc Mines, Eight-hour Day.

§360. Eight hours constitute a day's labor in lead and zinc mines; exception in cases of certain emergencies; basis of payment in emergencies.

§361. Penalty for requiring, permitting, coercing or attempting to coerce any person to work more than eight hours per day; exception; acts constituting separate offenses.

LAWS OF 1917, CH. 242.

AN ACT to safeguard the health of employees in lead and zinc mines by limiting the hours of labor and providing penalties for violation of this act.

§ 360. Eight hours constitute a day's labor in lead and zinc mines; exception in cases of certain emergencies; basis of payment in emergencies. Eight hours per calendar day shall constitute a day's labor for all persons employed in lead and zinc mines in the state of Kansas, except in cases of emergencies when it may be necessary to work more than eight hours for the protection of human life or for the prevention of irreparable damage to property, in which case all persons working more than eight hours shall be paid on the basis of eight hours constituting a day's work. [Laws 1917, ch. 242, § 1; February 19.]

§ 361. Penalty for requiring, permitting, coercing or attempting to coerce any person to work more than eight hours per day; exception; acts constituting separate offenses. Any owner, manager, foreman or other person, who shall require, permit, coerce or attempt to coerce, any person to work more than eight hours any calendar day, in any lead or zinc mine, except as permitted in section one of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than ten nor more than five hundred dollars: *Provided*, Violations of this act as to each person working more than eight hours and as to each day the same is required or permitted, shall be separate offenses. [Laws 1917, ch. 242, § 2; February 19.]

ARTICLE 11.—Mine-rescue Work.

§362. Governor, commissioner of labor and industry and assistant commissioner constitute mine-rescue station committee; purchase location for mine-rescue station; substations; erection or remodeling of buildings.

363. State architect to assist committee; plans and specifications for buildings; approval by committee; architect to superintend construction.

§364. Space provided in buildings for equipment belonging to or provided by the United States government; accommodations for officers and employees; room for assistant in charge of mine inspection; mine-rescue library, laboratory and class rooms.

365. Committee to purchase necessary mine-rescue and first-aid equipment and appliances.

§366. Assistant commissioner of labor and industry *ex officio* superintendent of mine-rescue station; commissioner of labor and industry to appoint assistant superintendents; charge of station and substations; examination of such assistants before appointment; examining committee.

367. Duty of superintendent of stations to supervise work of stations; duty of assistants; rescue of men from mines when notified of explosion or accident; assistants to report weekly to superintendent.

§368. Assistant superintendent to train miners in mine-rescue and first-aid work; training of children in public and high schools.

369. Purpose of mine-rescue station and duties of superintendent and assistant superintendent.

370. Building for housing mine-rescue car; purchase of additional apparatus and equipment for mine-rescue work.

LAWS OF 1917, CH. 239.

AN ACT relating to mine rescue work, and providing for the acquiring by the state of mine-rescue stations and mine-rescue substations, and making appropriations therefor.

§ 362. Governor, commissioner of labor and industry and assistant commissioner constitute mine-rescue station committee; purchase location for mine-rescue station; substations; erection or remodeling of buildings. Immediately after the publication of this act, the governor, the commissioner of labor and industry and the assistant commissioner of labor and industry in charge of mine inspection, as a committee herein-after referred to as mine-rescue station committee, shall purchase a suitable location in Crawford county, Kansas, for a mine-rescue station and suitable location in said county and Cherokee county, Kansas, for mine-rescue substations, and shall cause to be erected upon said location in said Crawford county a building for a mine-rescue station, or in case there shall already be a building on the location so purchased shall cause said building to be remodeled for such purposes and shall also cause to be erected on said other location suitable buildings for mine-rescue substations. [Laws 1917, ch. 239, § 1; April 5.]

§ 363. State architect to assist committee; plans and specifications for buildings; approval by committee; architect to superintend construction. That said committee shall call to its assistance the state architect, who shall prepare plans and specifications for the buildings to be erected or for the remodeling or altering of buildings already erected, which plans and specifications shall be approved by said committee in writing, and said architect shall superintend the erection of said building under the direction of said committee. [Laws 1917, ch. 239, § 2; April 5.]

§ 364. Space provided in buildings for equipment belonging to or provided by the United States government; accommodations for officers and employees; room for assistant in charge of mine inspection; mine-rescue library, laboratory and class rooms. In the construction or reconstruction of said building, space shall be provided for all mine-rescue equipment belonging to the United States government and now available for the use of said committee of labor and industry, and for all such equipment as may hereafter be provided by the government of the United States for the use of such assistant commissioner or of any mine-rescue department, together with accommodations for such officers and employees as shall be furnished by the United States government to care for and aid in the use of such equipment and appliances. Room also shall be provided for officers or assistant commissioner of labor and industry in charge of mine inspection, for mine-rescue library, laboratory and class rooms. [Laws 1917, ch. 239, § 3; April 5.]

§ 365. Committee to purchase necessary mine-rescue and first-aid equipment and appliances. Said committee shall purchase all necessary mine-rescue and first-aid equipment and appliances and install the same in said central station and substations. [Laws 1917, ch. 239, § 4; April 5.]

§ 366. Assistant commissioner of labor and industry ex officio superintendent of mine-rescue station; commissioner of labor and industry to appoint assistant superintendents; charge of station and substations; examination of such assistants before appointment; examining committee. The assistant commissioner of labor and industry in charge of mine inspection shall be *ex officio* superintendent of said mine-rescue station and the commissioner of labor and industry shall appoint one assistant superintendent, who shall be at said central station, in said Crawford county, Kansas, and one assistant superintendent at each of said substations, which assistant superintendents shall be appointed for a term of two years, and thereafter such assistants as shall be appointed every two years by said commissioner of labor and industry. Only such persons shall be appointed such assistants as shall have been examined for that place and granted certificates by the government examining board; in such case such a board shall be created; otherwise no person shall be appointed to the office of such assistant unless he shall be examined in the duties of his office, including mine-rescue and first-aid work, by a committee of three examiners qualified in such work, who shall be appointed from time to time, when necessary, by the governor. [Laws 1917, ch. 239, § 5; April 5.]

§ 367. Duty of superintendent of stations to supervise work of stations; duty of assistants; rescue of men from mines when notified of explosion or accident; assistants to report weekly to superintendent. It shall be the duty of the superintendent of stations to oversee and supervise the work of said stations, and it shall be the duty of said assistants to see that all equipment in their charge shall be kept in first-class working condition, ready for emergency and training work. Such assistants and said superintendent, when possible, shall rescue men, with all necessary appliances when notified of any explosion or accident of any kind in any mine within possible reach of the station; and such assistants shall report weekly to the superintendent of stations all such details regarding the work of the stations as shall be required by such superintendent. [Laws 1917, ch. 239, § 6; April 5.]

§ 368. Assistant superintendent to train miners in mine-rescue and first-aid work; training of children in public and high schools. Said assistant superintendent under the direction of said superintendent, shall, whenever not engaged in mine-rescue and first-aid work, devote their time to training miners in such work, and when possible to train such children in public and high schools, as may desire, in such work. [Laws 1917, ch. 239, § 7; April 5.]

§ 369. Purpose of mine-rescue station and duties of superintendent and assistant superintendent. The purpose of such mine-rescue stations and the duties of such superintendent and assistant superintendent, shall be: First, to aid in all cases of accident in mines within their reach, and second, furnish instruction and training of those engaged in mines in such work, including training of first-aid and mine-rescue crews of mines. [Laws 1917, ch. 239, § 8; April 5.]

Laws 1917, ch. 239, § 9, provides an appropriation of \$17,500 for purchasing sites, construction and remodeling of buildings, equipment, salaries, etc.

Laws 1917, ch. 239, § 10, provides that the auditor shall draw warrants for the sums and purposes specified.

LAWS OF 1913, CH. 47.

AN ACT making an appropriation for a building to be used for the housing of mine-rescue car No. 4, and for the purchase of mine-rescue apparatus.

WHEREAS, The government of the United States has made appropriations for the construction of mine-rescue cars, to be used for the purpose of saving life in case of mine disaster; and,

WHEREAS, The state of Kansas can secure the permanent location of mine-rescue car No. 4 in the mining district of the state, by providing a building for the housing of said car; and,

WHEREAS, The state of Kansas has never made provision for assisting in mine-rescue work or the saving of life in case of mine disaster; and,

WHEREAS, The efficiency of the rescue work in case of mine disaster would be increased by the procuring and purchasing of additional rescue equipment and apparatus: now, therefore,

Be it enacted by the Legislature of the State of Kansas:

§ 370. Building for housing mine-rescue car; purchase of additional apparatus and equipment for mine-rescue work. That the mine inspection department of the state of Kansas is hereby authorized to contract for the erection of a suitable building in or near the city of Pittsburg, Kansas, for the purpose of housing mine-rescue car No. 4. They are further authorized to purchase such additional apparatus and equipment for mine-rescue work as may be deemed necessary. [G. S. 1915, § 6287.]

Laws 1913, ch. 47, §§ 2-3, provide an appropriation of \$3,500 for paying for the building and the apparatus and equipment mentioned.

ARTICLE 12.—Room-and-pillar Plan, Entries, Etc.

§371. Manner of prosecuting work in mine worked on room-and-pillar plan; double entries; two entries driven parallel; cross-cuts; requirements; mines already in operation under single-entry plan.

372. Inspector to give notice to owner, etc., of coal mine to conform work-

ings of mine to requirements of act; owner, etc., given thirty days to comply.

§373. Penalty for failure of owner, agent or operator to comply with provisions of § 371, *ante*; every day mine so operated after first conviction deemed separate offense.

LAWS OF 1905, CH. 305.

AN ACT to provide for the health and safety of persons employed in and about coal mines.

§ 371. Manner of prosecuting work in mine worked on room-and-pillar plan; double entries; two entries driven parallel; cross-cuts; requirements; mines already in operation under single-entry plan. The owner, agent or operator of any coal mine in this state, if said mine is worked on the room-and-pillar plan, shall cause the work in such mine to be prosecuted in the following manner, and none other, to wit: Two entries must be driven parallel for the ingress and egress of the air, and cross-cuts must be made at intervals not to exceed forty feet apart, and no rooms, entries or other openings shall be allowed to start inside of the last cross-cut until the next one is made: *Provided*, That in the case of mines already opened and in operation under the single-entry plan, the provisions of this act shall not apply to such parts thereof as have been worked out when this act takes effect. [G. S. 1915, § 6317.]

§ 372. Inspector to give notice to owner, etc., of coal mine to conform workings of mine to requirements of act; owner, etc., given thirty days to comply. The state coal-mine inspector shall, after the taking effect of this law, give notice in writing to the owner, agent or operator in charge of each coal mine in this state now being worked on the room-and-pillar plan to conform the working of such mine to the requirements hereinbefore set out and prescribed; and such owner, agent or operator shall have thirty days in which to comply before being liable to the penalty provided herein. [G. S. 1915, § 6318.]

§ 373. Penalty for failure of owner, agent or operator to comply with provisions of § 371, ante; every day mine so operated after first conviction deemed separate offense. Any owner, agent or operator in charge of any coal mine worked on the room-and-pillar plan failing to comply with the provisions of section 1 shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than six months nor more than one year, or by both such fine and imprisonment; and every day that the mine is operated contrary to the provisions of section 1 after the owner, agent or operator in charge thereof shall have been convicted for a first offense under section 1 shall be and constitute a separate and distinct subsequent offense, and shall be punished as such. [G. S. 1915, § 6319.]

ARTICLE 13.—Shot-firers, Firing of Shots, Etc.

- §374. Shot-firers to be employed to fire all shots; unlawful to permit shots to be fired oftener than once each day or shift or until all persons hoisted out or mine vacated; mines where mechanical shot-firing devices used, all persons to be out of mine; shots in sinking and developing mine; shots in strip mines.
375. Unlawful to permit shot in strip mine when any person close enough to be injured.
376. Two shot-firers to be employed in all mines except strip mines, etc.; unlawful to permit shot to be fired except when two shot-firers in mine.
377. Unlawful to permit shot to be fired when dust accumulated so as to make it dangerous.

- §378. Regulations concerning preparing and firing of shots; hole penetrating solid face; unlawful to use mixed powder; shot in body of coal, etc., already loosened; following or dependent shots; tamping or stemming of shot-hole; limit of amount of powder; section not applicable to strip mines.
379. Act not to apply to mines operated on long-wall system; shot not to be fired in such mine until all persons have vacated the mine.
380. Penalty for failure to comply with or for violation of provisions of act; each day's violation or failure to comply to constitute a separate offense.
381. Sections of former act repealed by this act.

LAWS OF 1917, CH. 240.

AN ACT to provide for the protection of life and property in and about coal mines, repealing sections 6288, 6289, 6290, and 6291, General Statutes of 1915.

§ 374. Shot-firers to be employed to fire all shots; unlawful to permit shots to be fired oftener than once each day or shift or until all persons hoisted out or mine vacated; mines where mechanical shot-firing devices used, all persons to be out of mine; shots in sinking and developing mine; shots in strip mines. That all owners, lessees, operators, and other persons having the control or management of any coal mine within this state shall, while such mine is in operation, employ shot-firers, whose duty it shall be to fire all shots in said mine. And it shall be unlawful for any such owner, lessee, operator or other person to permit shots to be fired in such mine oftener than once each day or shift, or to permit any such shot to be fired until all persons shall have been hoisted out of or shall have vacated such mine, except the persons employed to fire such shot. And in mines where mechanical shot-firing devices are used it shall be unlawful to fire shots until all persons are out of such mine: *Provided*, That while sinking and developing coal mines such shots may be fired at any time during the day, but no person shall be permitted to enter such mine after a shot shall have been fired until all smoke from the shot has been expelled from the mine: *And provided further*, That in all strip mines such shots may be fired at any time during the day. [Laws 1917, ch. 240, § 1; May 26.]

Shot prepared by inexperienced shot-firer, under direction of foreman: employer held liable for injuries to shot-firer. *Marshall v. Anderson*, 98 K. 573.

§ 375. Unlawful to permit shot in strip mine when any person close enough to be injured. That it shall be unlawful for any owner, lessee, operator or other person in control or management of any strip mine to permit any shot to be fired while any person is near enough thereto to be injured from such shot. [Laws 1917, ch. 240, § 2; May 26.]

§ 376. Two shot-firers to be employed in all mines except strip mines, etc.; unlawful to permit shot to be fired except when two shot-firers in mine. That in all mines except strip mines and mines equipped with mechanical firing devices, it shall be the duty of the owner, lessee, operator, or person in charge thereof to employ at least two shot-firers, and it shall be unlawful to permit any shot to be fired except when at least two shot-firers are in the mine. [Laws 1917, ch. 240, § 3; May 26.]

§ 377. Unlawful to permit shot to be fired when coal dust accumulated so as to make it dangerous. That it shall be unlawful for any owner, operator, lessee or other person in charge of any mine to permit any shot to be fired in any coal mine where there is such an accumulation of coal dust as will make it dangerous to fire such shot. [Laws 1917, ch. 240, § 4; May 26.]

§ 378. Regulations concerning preparing and firing of shots; hole penetrating solid face; unlawful to use mixed powder; shot in body of coal, etc., already loosened; following or dependent shots; tamping or stemming of shot-hole; limit of amount of powder; section not applicable to strip mines. That it shall be unlawful for any person to prepare a shot in a hole which has been drilled so as to penetrate the solid face beyond the point which has been prepared for the shot; or, to load any shot with mixed powder; or to prepare or fire any shot with black powder in any body of coal or other material which has already been loosened by a previous shot; or to prepare or fire any following or dependent shots; or to prepare any shots without tamping or stemming the shot-hole with incombustible material, and without using any coal drillings, such tamping to be done with a bar composed of or tipped with some material which will not produce sparks; or to load any shot in any case with more than five pounds of black powder: *Provided*, That this section shall not apply to strip mines. [Laws 1917, ch. 240, § 5; May 26.]

§ 379. Act not to apply to mines operated on long-wall system; shot not to be fired in such mine until all persons have vacated the mine. That the preceding sections of this act shall not apply to mines operated on the long-wall system of mining: *Provided*, That it shall be unlawful for any operator, owner, lessee, or agent, operating any mine on the long-wall system of mining, to permit any shot to be fired in such mine, until all persons have vacated such mine, except the person or persons firing such shots. [Laws 1917, ch. 240, § 6; May 26.]

§ 380. Penalty for failure to comply with or for violation of provisions of act; each day's violation or failure to comply to constitute a separate offense. That any person, firm or corporation who shall fail to comply with or shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine in a sum of not less than fifty dollars nor more than two hundred dollars or by imprisonment in the county jail for a period not to exceed thirty days or by both such fine and imprisonment and each day's violation or failure to comply with the provisions of this act shall constitute a separate offense. [Laws 1917, ch. 240, § 7; May 26.]

§ 381. Sections of former act repealed by this act. That original sections 6288, 6289, 6290, and 6291 of the General Statutes of 1915 be and the same are hereby repealed. [Laws 1917, ch. 240, § 8; May 26.]

ARTICLE 14.—Sprinkling and Removal of Dust, Etc.

§ 382. Duty of mine boss, etc., in charge of mine where coal-dust, etc., accumulate; sprinkling; removal of such coal-dust, etc., where impracticable to overcome by sprinkling; mine inspector and deputy inspectors to enforce preventive measures against gathering or accumulation of combustible matter that is explosive.

§ 383. Penalty for neglect or refusal to comply with preceding section by owner or lessee.

384. Drillings to be removed by miner from mouth of drill-hole before shot fired; miners not to use coal-drillings for tamping shots.

385. Penalty for neglect or refusal to comply with provisions of preceding section.

386. Repeal of acts in conflict herewith.

LAWS OF 1909, CH. 174.

AN ACT providing for the sprinkling and removal of dust and other inflammable ingredients from roadways, air-ways, rooms, cross-cuts or other openings in mines, for the protection of health, life and safety of employees, and providing penalties for the violation thereof.

§ 382. Duty of mine boss, etc., in charge of mine where coal-dust, etc., accumulate; sprinkling; removal of such coal-dust, etc., where impracticable to overcome by sprinkling; mine inspector and deputy inspectors to enforce preventive measures against gathering or accumulation of combustible matter that is explosive. It shall be the duty of the mine boss or agent in charge of any mine where coal-dust or any other inflammable ingredients accumulate to cause the same to be properly sprinkled or saturated in either air-courses, entries, rooms or cross-cuts, or if impracticable to overcome such coal-dust or other inflammable ingredients by sprinkling, then the same shall be removed and shall not be deposited where it will again be distributed in the atmosphere by the ventilating currents, or removed from the mine, when in the judgment of the mine inspector it becomes necessary to do so. It shall be the duty of the mine inspector or deputy inspectors to enforce all possible preventive measures necessary to maintain the safety of all persons employed in any mine against the gathering or accumulation of any combustible matter that is explosive in its nature, and shall cause the operator, or whosoever is operating such mine as owner, lessee, agent, or in any capacity, to immediately remove any such accumulated matter. [G. S. 1915, § 6331.]

§ 383. Penalty for neglect or refusal to comply with preceding section by owner or lessee. Any owner or lessee who shall neglect or refuse to comply with the provisions of section 1 of this act shall be deemed guilty of a misdemeanor, and shall be fined in a sum of not less than ten dollars nor more than one hundred dollars for each violation of the provisions of said section 1 of this act. [G. S. 1915, § 6332.]

"Section 1 of this act," mentioned herein, is § 382, *supra*.

§ 384. Drillings to be removed by miner from mouth of drill-hole before shot fired; miners not to use coal-drillings for tamping shots. It shall be the duty of the miner to remove the drillings from the mouth of the drill-hole to a distance of not less than fifteen feet before the shots are fired, and no miner shall use coal-drillings for tamping shots. [G. S. 1915, § 6333.]

§ 385. Penalty for neglect or refusal to comply with provisions of preceding section. Any miner who shall neglect or refuse to comply with

the provisions of section 3 of this act shall be deemed guilty of a misdemeanor, and shall be fined in a sum of not less than one dollar nor more than ten dollars for each violation of said section 3. [G. S. 1915, § 6334.]

"Section 3 of this act," mentioned herein, is § 384, *supra*.

§ 386. Repeal of acts in conflict herewith. All acts and parts of acts in conflict with the provisions of this act are hereby repealed. [G. S. 1915, § 6335.]

ARTICLE 15.—Telephone Systems in Coal Mines.

§387. Unlawful to operate or permit to be operated any coal mine not equipped with party line telephone system.

388. Number of telephones to be included in such system of party line telephones; places where such telephones shall be located in and about such mine.

389. Telephones may be removed from worked-out portion of mine.

390. Danger signal or alarm; duty of drivers, motormen and trip-riders to notify others; every person re-

ceiving signal to cooperate in giving notice to others.

§391. Penalty for willful neglect or refusal to obey requirements of act, willfully giving false danger signal or tampering with or destruction of appliances.

392. Penalty for refusal or neglect of corporation, company, owner, lessee, etc., to comply with provisions of act; each day mine so operated to constitute a separate offense.

LAWS OF 1911, CH. 221.

AN ACT to promote the protection and safety of life and limb of employees in coal mines, and providing penalties for the violation thereof.

§ 387. Unlawful to operate or permit to be operated any coal mine not equipped with party line telephone system. On and after November 1, 1911, it shall be unlawful for any corporation, company, owner, lessee, officer, or agent to operate or permit to be operated any coal mine within the state of Kansas, not equipped with a party line telephone system as hereinafter provided. [G. S. 1915, § 6336.]

§ 388. Number of telephones to be included in such system of party line telephones; places where such telephones shall be located in and about such mine. There shall be a system of party line telephones which shall include one telephone on the surface not to exceed one hundred feet from the tippie, and one at the bottom of the shaft not to exceed one hundred feet therefrom, or, in slope or drift mines at the first cross-entry from the mouth of slope or drift; and in addition thereto, there shall be one telephone in the main entry on each side of the mine not to exceed 1000 [feet] from the bottom of the hoisting shaft, slope or drift; and there shall be additional telephones installed thereafter in the main entry on each side of the mine at a point not to exceed one thousand feet from last phone installed: *Provided*, That if cross-entries are used in development in place of main entries, this regulation shall apply thereto: *And provided further*, That when main entries reach the land line, or extreme point of development at a distance of more than six hundred feet from last telephone installed in such entry, then an additional telephone shall be installed at last cross-entries. [G. S. 1915, § 6337.]

§ 389. Telephones may be removed from worked-out portion of mine. Telephones may be removed in the development of any mine, from any worked-out portion thereof. [G. S. 1915, § 6338.]

§ 390. Danger signal or alarm; duty of drivers, motormen and trip-riders to notify others; every person receiving signal to cooperate in giving notice to others. In case of a danger signal or alarm being given, it

shall be the duty of all drivers, motormen and trip-riders, to notify all other drivers, mortormen, trip-riders or miners from whom they haul coal, and it shall be the duty of every person in the mine receiving such danger signal to coöperate in giving notice thereof to all other persons in the mine. [G. S. 1915, § 6339.]

§ 391. Penalty for willful neglect or refusal to obey requirements of act, willfully giving false danger signal or tampering with or destruction of appliances. Any willful neglect or refusal to obey the requirements or provisions of this act, or willfully giving a false danger signal, or tampering with or destruction of any of the appliances required by the provisions of this act, shall be deemed a misdemeanor, punishable by a fine of not less than fifty dollars and not to exceed two hundred dollars, or by imprisonment in the county jail not exceeding three months, or both, in the discretion of the court. [G. S. 1915, § 6340.]

§ 392. Penalty for refusal or neglect of corporation, company, owner, lessee, etc., to comply with provisions of act; each day mine so operated to constitute a separate offense. If any corporation, company, owner, lessee, officer or agent shall refuse or neglect to comply with the provisions of this act, they shall be deemed guilty of a misdemeanor punishable by a fine of not less than one hundred dollars for each offense, or by imprisonment in the county jail not less than six months, or by both such fine and imprisonment, and each day that any mine is operated in violation of the provisions of this act shall constitute a separate offense. [G. S. 1915, § 6341.]

ARTICLE 16.—Weighing of Coal at the Mine.

§393. Unlawful for mine-owner, etc., employing miners at bushel or ton rates, etc., to pass coal over screen, etc., before same is weighed and credited to employee and accounted for at legal rate of weights.

394. Weighman to subscribe oath or affirmation; substance of oath or affirmation; to be posted in weigh-office; penalty for violations of provisions of act.

395. Miners may employ a check-weighman at their own expense; rights and privileges of such check-weighman; subject to same oath and penalties as regular weighman.

396. Penalty for having or using any scale or scales for fraudulent weighing or for resorting to any means to prevent coal from being correctly weighed and reported.

§397. Contracts, agreements, etc., waiving, modifying or annulling provisions of § 393, *supra*, void and of no effect; coal sent to surface shall be accepted or rejected; weighed, etc., when accepted; right of action not to be invalidated.

398. Provisions of act to apply to loaders in mines where mining done by machinery; contract to load by bushel, ton, etc.; output to be weighed in accordance with provisions of this act.

399. Secretary of mine industries *ex-officio* inspector of weights, measures and scales; testing of scales; call attention of mine-owner, etc., to defects, etc.; penalty for refusing to allow inspector or deputies to test scales or for failure to put such scales in proper adjustment, etc.; duty of prosecuting attorneys.

LAWS OF 1893, CH. 188.

AN ACT to regulate the weighing of coal at the mine.

§ 393. Unlawful for mine-owner, etc., employing miners at bushel or ton rates, etc., to pass coal over screen, etc., before same is weighed and credited to employee and accounted for at legal rate of weights. It shall be unlawful for any mine-owner, lessee or operator of coal mines in this state, employing miners at bushel or ton rates or other quantity, to pass the output of coal mines by said miners over any screen or other device which shall take any part from the value thereof before the same shall have been weighed and duly credited to the employees and accounted

for at the legal rate of weights as fixed by the laws of Kansas. [G. S. 1915, § 6348.]

§ 394. Weighman to subscribe oath or affirmation; substance of oath or affirmation; to be posted in weigh-office; penalty for violation of provisions of act. The weighman employed at any mine shall subscribe an oath or affirmation, before a justice of the peace or other officer authorized to administer oaths, to do justice between employer and employee, and to weigh the output of coal from mines in accordance with the provisions of section one of this act. Said oath or affirmation shall be kept conspicuously posted in the weigh-office, and any weigher of coal or persons so employed who shall knowingly violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five nor more than one hundred dollars for each offense, or by imprisonment in the county jail for a period not to exceed thirty days, or by both such fine and imprisonment. [G. S. 1915, § 6349.]

§ 395. Miners may employ a check-weighman at their own expense; rights and privileges of such check-weighman; subject to same oath and penalties as regular weighman. The miners employed by or engaged in working for any mine-owner, operator or lessee in this state shall have the privilege, if they so desire, of employing at their own expense a check-weighman, who shall have like rights and privileges in the weighing of coal as the regular weighman, and be subject to the same oath and penalties as the regular weighman. [G. S. 1915, § 6350.]

§ 396. Penalty for having or using any scale or scales for fraudulent weighing or for resorting to any means to prevent coal from being correctly weighed and reported. Any person or persons having or using any scale or scales for the purpose of weighing the output of coal at mines, so arranged or constructed that fraudulent weighing may be done thereby, or who shall knowingly resort to or employ any means whatever by reason of which such coal is not correctly weighed, and reported in accordance with the provisions of this act, shall be deemed guilty of a misdemeanor, and shall upon conviction for each offense be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period not to exceed sixty days, or by both such fine and imprisonment. [G. S. 1915, § 6351.]

§ 397. Contracts, agreements, etc., waiving, modifying or annulling provisions of § 393, supra, void and of no effect; coal sent to surface shall be accepted or rejected; weighed, etc., when accepted; right of action not to be invalidated. Any provisions, contract or agreement between mine-owners or operators thereof and the miners employed therein whereby the provisions of section 1 of this act are waived, modified, or annulled, shall be void and of no effect; and the coal sent to the surface shall be accepted or rejected, and if accepted shall be weighed in accordance with the provisions of this act; and right of action shall not be invalidated by reason of any contract or agreement. [G. S. 1915, § 6352.]

§ 398. Provisions of act to apply to loaders in mines where mining done by machinery; contract to load by bushel, ton, etc.; output to be weighed in accordance with provisions of this act. The provisions of this act shall also apply to the class of workers in mines known as loaders, engaged in mines wherein mining is done by machinery. Whenever the workmen are under contract to load coal by the bushel, ton, or any quan-

tity the settlement of which is had by weight, the output shall be weighed in accordance with the provisions of this act. [G. S. 1915, § 6353.]

LAWS OF 1903, CH. 544.

AN ACT making the secretary of mine industries inspector of weights, measures and scales at coal mines, and defining his powers and duties, and repealing all acts or parts of acts inconsistent herewith.

§ 399. Secretary of mine industries *ex officio* inspector of weights, measures and scales; testing of scales; call attention of mine-owner, etc., to defects, etc.; penalty for refusing to allow inspector or deputies to test scales or for failure to put such scales in proper adjustment, etc.; duty of prosecuting attorneys. That the secretary of mine industries of the state of Kansas shall be *ex officio* inspector of weights, measures and scales used at coal mines, and he or his deputies are hereby empowered, and it shall be his or their duty, to test the scales used to weigh coal mined in the mines of this state at least once every six months, to ascertain whether or not such scales correctly measure the weight of such coal; and if defects or irregularities are found in such scales which prevent correct weights and measurements, the inspector shall call the attention of the mine-owner, agent or operator to said defects, and direct that the same be at once properly adjusted and corrected. If the owner, agent or operator of any coal mine in this state shall refuse to allow such inspector or his deputies to properly test the scales used at such mine or mines, or shall fail or refuse to put such scales in proper adjustment and condition, so that the same shall correctly weigh the coal mined, after being notified by said inspector or his deputy so to do, such owner, agent or operator shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars, or be confined in the county jail not exceeding six months, or both, in the discretion of the court; and it shall be the duty of the prosecuting attorneys in the respective counties to prosecute any person, firm or corporation violating the provisions of this section, the same as in other misdemeanor cases. [G. S. 1915, § 6354.]

The act providing for secretary of mine industries (Laws 1898, ch. 33) provided that the duties, etc., of the state mine inspector should devolve upon such secretary. The office of such secretary was abolished by Laws 1913, ch. 217, creating a department of labor and industry, which provides that the commissioner of labor and industry shall be *ex officio* state mine inspector. (See § 165, *ante*.)

CHAPTER 27.—MISDEMEANORS, JURISDICTION.

§ 400. Original jurisdiction of justices of the peace in misdemeanors; concurrent with district court; limit of fine or imprisonment.

PART OF GENERAL STATUTES OF 1868, AS AMENDED BY LAWS OF 1869, CH. 61.

AN ACT regulating the jurisdiction and procedure before justices of the peace in cases of misdemeanor.

§ 400. Original jurisdiction of justices of the peace in misdemeanors; concurrent with district court; limit of fine or imprisonment. Justices of the peace shall have concurrent original jurisdiction with the district court, coextensive with their respective counties, in all cases of misdemeanor in which the fine cannot exceed five hundred dollars and the imprisonment cannot exceed one year, except as otherwise provided by law [G. S. 1915, § 8298.]

Party brought before justice charged with misdemeanor may demand trial. *In re Donnelly, Petitioner, &c.*, 30 K. 191.
 District court may try defendant for misdemeanor without preliminary hearing. *The State v. Watson*, 30 K. 281.
 Trial before justice for misdemeanor; state cannot treat as preliminary. *In re Donnelly, Petitioner, &c.*, 30 K. 424.
 Jurisdiction where several offenses charged; each offense within jurisdiction. *In re Macke, Petitioner*, 31 K. 54.
 Refusal of district judge to take cognizance of complaint considered. *The State v. Forbriger*, 34 K. 6.
 Information filed for misdemeanor in district court in vacation. *In re Eddy, Petitioner*, 40 K. 592.

CHAPTER 28.—MOTHER'S AID.

- §401. Persons to whom commissioners may pay annual allowance; persons entitled to "mother's aid"; duty of county commissioners to pay allowance or pension; amount; mother to file application for mother's aid; matters to be set forth in such application; verification; supported by affidavit of two disinterested householders; investigation by three reputable women and report to board; order finding and determining facts and fixing amount necessary for county to contribute; payment to mother for child or children; temporary increase or decrease of payments; supplies may be given instead of money.
- §402. Certified copy of findings and order of commissioners to be filed with county clerk; duty of clerk to draw warrant each month; warrants delivered to persons designated; duplicate receipts; county treasurer to pay warrants out of general revenue fund; act not to repeal other acts relating to poor; unlawful for attorney to receive fee for proceedings.
403. Board of county commissioners to have jurisdiction of all cases under this act.
404. Repeal of Laws of 1915, ch. 261, § 1.

LAWS OF 1915, CH. 261, AS AMENDED BY LAWS OF 1917, CH. 138.

AN ACT to amend chapter 261 of the Session Laws of 1915, the same being an act to amend section 6624 of the General Statutes of 1915 relating to the poor, for the relief of widows and dependent children, and repealing said original section.

§ 401. Persons to whom commissioners may pay annual allowance; persons entitled to "mother's aid"; duty of county commissioners to pay allowance or pension; amount; mother to file application for mother's aid; matters to be set forth in such application; verification; supported by affidavit of two disinterested householders; investigation by three reputable women and report to board; order finding and determining facts and fixing amount necessary for county to contribute; payment to mother for child or children; temporary increase or decrease of payments; supplies may be given instead of money. That the board of county commissioners, may, in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound mind, and who from their general character will probably be benefited thereby, and also the parents of idiots, and of children otherwise helpless requiring the attention of their parents and who are unable to provide for said children themselves, such annual allowances as will not exceed the charge of their maintenance in the ordinary mode, the said board taking the usual amount of charges in like cases as the rule for making such allowance: *Provided*, That in any case where the mother of any child or children under the age of sixteen (16) years shall have the sole care and custody of such child or children by reason of such mother being a widow, divorced, or by reason of the husband of such mother being physically or mentally unable to earn a living for himself and family, or by reason of his being lawfully confined in any penal or other state institution, or by reason of the husband of such mother having at all times for three months

last past abandoned or deserted such mother without just cause or collusion, and where such mother has been an actual *bona fide* resident of the county for two years next preceding her application, and where such mother is a provident woman of good moral character and a fit person to have the care and custody of such child or children, and is financially unable to support such child or children, and where such child or children have not sufficient property or income to support such child or children, such mother shall be entitled to a "mother's aid" in caring for and supporting such child or children from the county in which she is a resident at the time she makes application; and in all such cases it shall be the duty of the county commissioners, to pay to such mother, by way of allowance or pension, such sum, monthly, as may be reasonably necessary to support such mother and child or children, not to exceed the charge of maintenance in the ordinary mode, which may be increased or diminished from time to time as may be necessary, just and reasonable: *Provided*, That the total sum allowed to any one mother coming under the provisions of this act shall not exceed the sum of twenty-five (\$25) dollars per month: *And provided further*, That before any such allowance or pension shall be granted as set forth in the foregoing proviso, it shall be the duty of such mother to file in the office of the county clerk of the county in which she is an actual and *bona fide* resident at the time as hereinbefore provided, an application for a mother's aid for caring for and supporting such child or children and setting forth in such application that she is an actual and *bona fide* resident of such county, and that she has been at all times for two years last past, and that she is the mother of such child or children, and setting out a list of her property and that of such child or children, together with the amount of income therefrom, and stating that she is financially unable to support and educate such child or children, and stating that she is a widow, or that her husband has abandoned her, and stating the date of abandonment, or that the husband is mentally or physically unable to earn a living for himself and family, or that the husband is confined in one of the state institutions, naming it, which application shall be duly verified by the applicant and supported by the affidavit of two disinterested householders of the township in which such mother is a resident, setting forth the same facts and that the mother is a woman of good moral character and a fit person to have the care and custody of such child or children, and thereupon and before granting any such allowance or pension provided for in this act, the board of county commissioners shall name and designate three reputable women, in no way related to such applicant, residing in the township or city where such applicant resides, who shall, without compensation, investigate such applicant and report in writing to said board of county commissioners under such rules and regulations as the court may prescribe or require. And after a full investigation, if said board of county commissioners shall find that unless relief is granted the mother will be unable to properly support and educate her child or children, or that they may become a public charge, and that the statements alleged in the application are true, it shall make an order finding and determining such facts and thereby and therein fixing and determining the amount of money which it deems necessary for the county to contribute toward the support of such mother, child or children, and that such sums of money or so much thereof as the board of county commissioners shall deem necessary and proper shall be paid to such mother for said child or children as directed and prescribed by the

board of county commissioners: *Provided*, That any such payments of money may be increased temporarily by the board of county commissioners in case of sickness or unusual condition, and decreased in like manner when deemed unnecessary: *And provided further*, That the court may, in its discretion, order the amount of aid to be given in supplies instead of money. [G. S. 1915, § 6624 [6824], as amended by Laws 1917, ch. 138, § 1; May 26.]

See note to § 404, *post*, concerning section repealed by this act.

§ 402. Certified copy of findings and order of commissioners to be filed with county clerk; duty of clerk to draw warrant each month; warrants delivered to persons designated; duplicate receipts; county treasurer to pay warrants out of general revenue fund; act not to repeal other acts relating to poor; unlawful for attorney to receive fee for proceedings. A certified copy of such findings and order of the board of county commissioners shall be filed with the county clerk of the county where such proceedings are had, and thereupon and thereafter, and so long as such order remains in force, it shall be the duty of the county clerk each month to draw his warrant on the general fund of the county in favor of the person and for the amount specified in such findings and order. Such warrants shall be delivered to the person designated in said findings and order upon the executing of a duplicate receipt therefor, one to be filed with the juvenile court, and one to be filed with the county clerk. It shall be the duty of the county treasurer to pay such warrant out of the funds in the general revenue fund of the county when properly presented. But nothing in this act shall be construed as repealing any laws now in force giving the county commissioners power to grant aid to the poor in their respective counties: *Provided*, That it shall be unlawful for any attorney to receive any fee for bringing the proceedings in the juvenile court provided herein. [Laws 1917, ch. 138, § 2; May 26.]

§ 403. Board of county commissioners to have jurisdiction of all cases under this act. The board of county commissioners in each of the several counties of the state shall have jurisdiction of all cases coming under the provisions of this act. [Laws 1917, ch. 138, § 3; May 26.]

§ 404. Repeal of Laws of 1915, ch. 261, § 1. That section 1 of chapter 261 of the Session Laws of 1915 as amending section 6624 of the General Statutes of 1915 be and the same hereby is repealed. [Laws 1917, ch. 138, § 4; May 26.]

The foregoing section repeals "section 1 of chapter 261 of the Session Laws of 1915." Said section is printed as section 6824 of the General Statutes of 1915. "Section 6624 of the General Statutes of 1915" relates to negotiable instruments. Section 6824 of the General Statutes of 1915 is the 1915 act relating to "mother's aid," which was entitled "An act to amend section 5545 of the General Statutes of 1909, relating to the poor, for the relief of widows and dependent children, and repealing said original section." See, also, the title to the act of 1917, preceding § 401, *supra*.

CHAPTER 29.—NIGHT SCHOOLS.

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| <p>§405. Free public night schools may be maintained by school board or board of education; persons eligible to attend; board to establish and maintain night school when petitioned by parents, etc.; when school may be discontinued.</p> <p>406. Payment of cost of establishing and maintaining such night school; government of such school; act not to affect law relating to day schools; attendance upon such night school not compulsory.</p> | <p>§407. Sessions of such public night schools, when and where held; commencement and continuance of term or terms of such night school.</p> <p>408. Board to furnish same equipment used in day school; courses of study; rules and regulations.</p> <p>409. Board to hire one or more teachers for such night school; qualifications; teacher's certificate; monthly salary calculated upon number of hours actually spent in teaching.</p> <p>410. Repeal of acts in conflict herewith.</p> |
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LAWS OF 1913, CH. 267.

AN ACT providing for the establishment, maintenance and regulation of public night schools as a part of the public-school system of the state of Kansas, and repealing all acts and parts of acts in conflict herewith.

§ 405. Free public night schools may be maintained by school board or board of education; persons eligible to attend; board to establish and maintain night school when petitioned by parents, etc.; when school may be discontinued. The school board of any district or the board of education of any city in this state shall have the power to establish and maintain free public night schools in connection with the public school of such district or city, for the instruction of persons of the age of fourteen years and over residing in said district or city, not required by law to attend the public day school therein: *Provided*, That it shall be the duty of such board to establish and maintain such public night school whenever petitioned in writing therefor by the parents or guardians of ten persons eligible to attend said night school: *Provided further*, That said board may discontinue such night school whenever the average nightly attendance thereof shall be not more than seven. [G. S. 1915, § 9394.]

§ 406. Payment of cost of establishing and maintaining such night school; government of such school; act not to affect law relating to day schools; attendance upon such night school not compulsory. The cost of establishing and maintaining said public night school shall be paid from the public school fund of said district or city and the said night school shall be a part of the public school system, and governed, as far as practicable, in the same manner and by the same officers as provided by law for the government of the other public schools of this state: *Provided*, That nothing in this act shall be construed to change the law, not in conflict herewith, relating to the public day schools of this state: *And provided further*, That nothing in this act shall be held to compel attendance upon such public night school. [G. S. 1915, § 9395.]

§ 407. Sessions of such public night school, when and where held; commencement and continuance of term or terms of such night school. The sessions of said public night school shall be held at night on not less than three nights each week during the continuance of such school in one or more of the regular class rooms in one or more of the public school buildings of said district or city, and the term or terms of said public night school shall continue only during the term or terms of the regular public school in such district or city: *Provided*, That said night school term shall begin not later than the fifteenth day of October of

any year and shall continue for not less than five months thereafter, except as provided in section one of this act. [G. S. 1915, § 9396.]

§ 408. Board to furnish same equipment used in day school; courses of study; rules and regulations. The board, as far as practicable, shall furnish the same equipment used in the public day school of said district or city, and shall provide for the courses of study, rules and regulations, not in conflict herewith, that it may deem best for such night school. [G. S. 1915, § 9397.]

§ 409. Board to hire one or more teachers for such night school; qualifications; teacher's certificate; monthly salary calculated upon number of hours actually spent in teaching. The board shall hire one or more teachers, who may or may not be employed as a public-school teacher, having the like qualifications, evidenced by the proper teacher's certificate, required by law for teachers in the public day schools of such district or city, and shall pay said night school teacher a monthly salary, calculated upon the number of hours actually spent in teaching in said night school, and in the manner provided by law for the paying of teachers in the public schools of said district or city. [G. S. 1915, § 9398.]

§ 410. Repeal of acts in conflict herewith. All acts and parts of acts in conflict herewith be and the same are hereby repealed. [G. S. 1915, § 9399.]

CHAPTER 30.—OFFICERS, IMPORTING OR PERSONATING.

§411. Nonresidents not to be appointed special deputies, marshals or policemen in this state.

412. Unlawful to import into this state any person, etc., for purpose of discharging duties devolving upon sheriffs, deputy sheriffs, policemen, constable, etc.

413. Penalty for exercising functions of, or person holding himself out as, a deputy sheriff, marshal, policeman, constable, etc.

§414. Penalty for violation of § 412, *supra*, by person, company or corporation; person, officer or agent employing such private detectives guilty of felony; punishment; each day private armed detective forces employed considered distinct offense; governor may appoint non-resident to serve warrant issued on requisition from another state.

LAWS OF 1897, CH. 124.

§ 411. Nonresidents not to be appointed special deputies, marshals or policemen in this state. That no sheriff of a county, mayor of a city, or other private persons authorized by law to appoint special deputies, marshals or policemen in this state, to preserve the public peace and prevent and quell public disturbances, shall hereafter appoint as such special deputies, marshals or policemen any person who is not resident of this state. [G. S. 1915, § 3748.]

§ 412. Unlawful to import into this state any person, etc., for purpose of discharging duties devolving upon sheriffs, deputy sheriffs, policemen, constables, etc. That it shall be unlawful for any person, company or association or corporation to bring or import into this state any person or persons or association of persons for the purpose of discharging the duties devolving upon sheriffs, deputy sheriffs, policemen, constables or peace officers in the protection or preservation of public or private property, or in the punishment of any person violating the criminal laws of this state. [G. S. 1915, § 3749.]

§ 413. Penalty for exercising functions of, or person holding himself out as, a deputy sheriff, marshal, policeman, constable, etc. That any person or persons who shall in this state, without the authority, exercise or attempt to exercise the functions of or hold himself or themselves out to any as a deputy sheriff, marshal, policeman, constable or peace officer, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for a period of not less than three months nor more than one year. [G. S. 1915, § 3750.]

§ 414. Penalty for violation of § 412, *supra*, by person, company or corporation; person, officer or agent employing such private detectives guilty of felony; punishment; each day private armed detective forces employed considered distinct offense; governor may appoint nonresident to serve warrant issued on requisition from another state. That any person, company or corporation guilty of violating any of the provisions of said section two of this act shall be liable to a penalty of ten thousand dollars, to be recovered in the name of the state, for the use of the school fund of the county where such private armed detective forces were used by such corporation or persons; and the person, officer or agent employing such private detectives shall be guilty of felony, and on conviction thereof shall be punished by imprisonment at hard labor not exceeding five years and not less than one year, and every day that private armed detective forces are employed or used shall be considered a separate and distinct offense: *Provided, however*, That nothing contained in this act shall prevent the governor of this state from appointing a citizen of another state to serve a warrant issued on a requisition from the governor of another state. [G. S. 1915, § 3751.]

"Section two of this act," mentioned herein. is § 412, *supra*.

CHAPTER 31.—OLD SOLDIERS' PREFERENCE LAW.

§415. Employment of persons who served in army and navy of United States in war of rebellion; preference to appointment or employment in public departments and on all public works of state, county, city or town; age and qualifications of such persons.

416. Penalty for disobedience or neglect to obey provisions of preceding

section by any officer or board; impeachment; prosecution for misdemeanor; forfeiture of office.

§417. Soldiers and sailors or widows and orphans of deceased soldiers and sailors to be retained in making reduction of force in any departments, cities, etc.

418. Penalty for violation of preceding section.

LAWS OF 1886, CH. 160, AS AMENDED BY LAWS OF 1901, CH. 186, AND LAWS OF 1907, CH. 374.

§ 415. Employment of persons who served in army and navy of United States in war of rebellion; preference to appointment or employment in public departments and on all public works of state, county, city or town; age and qualifications of such persons. In grateful recognition of the services, sacrifices and suffering of persons who served in the army and navy of the United States in the war of the rebellion, and have been honorably discharged therefrom, they shall be preferred for appointments and employed to fill positions in every public department and upon all public works of the state of Kansas, and of the counties, cities and towns of this state, if competent to perform such services; and the person thus preferred shall not be disqualified from holding any position in said service on account of his age or by reason of any physical disability, pro-

vided such age or disability does not render him incompetent to perform the duties of the position applied for; and when any such ex-soldier or sailor shall apply for appointment to any such position, place, or employment, the officer, board or person whose duty it is or may be to appoint a person to fill such place shall, if the applicant be a man of good reputation, and can perform the duties of the position applied for by him, appoint said ex-soldier or sailor to such position, place, or employment. [G. S. 1915, § 9491.]

Soldier or sailor must possess equal qualifications with other applicants. *Dever v. Humphrey*, 68 K. 759.

Character and extent of investigation by appointing power considered. *Dever v. Humphrey*, 68 K. 759.

Act of 1901 held constitutional and valid. *Goodrich v. Mitchell*, 68 K. 765.

Act of 1907 not unconstitutional when applicant entitled to office. *The State v. Addison*, 76 K. 699.

Appointing power to determine qualifications: when such determination final. *The State v. Addison*, 76 K. 699.

Applicant must possess qualifications essential to performance of duties. *The State v. Addison*, 76 K. 699.

Act mandatory upon officers of state, counties, cities and towns. *The State v. Addison*, 78 K. 172.

"Competency" of applicants; good faith required in determining qualifications. *The State v. Addison*, 78 K. 172.

Appointment of county assessor; appointment rendered valid by curative act. *James v. Hayes*, 79 K. 608.

Evidence held not to show bad faith of appointing officer. *Dever v. Platt*, 81 K. 200.

Mandamus to compel councilmen to confirm appointment made by mayor. *Jury v. Adams*, 81 K. 207.

Action to oust county assessor; bad faith not shown. *The State v. McNeill*, 83 K. 234.

No paramount right to office as between ex-soldiers and sailors. *Campbell v. Sargent*, 85 K. 590; *Urmy v. Arnold*, 86 K. 346.

Cities under commission form of government; appointments from certified list. *Goodrich v. O'Neill*, 85 K. 595.

Ex-soldiers must take examination under civil service requirements. *Goodrich v. O'Neill*, 85 K. 595.

Section not affected by act providing for civil service commission, see § 113, *ante*.

§ 416. Penalty for disobedience or neglect to obey provisions of preceding section by any officer or board; impeachment; prosecution for misdemeanor; forfeiture of office. Any state officer or any board composed of state officers, county or city officers, or any board who have been appointed and have charge of the penal and charitable institutions of the state, who shall willfully disobey or neglect to obey the provisions of this act, shall be deemed guilty of a misdemeanor, and subject to impeachment as provided by law, and prosecuted as other cases of misdemeanor; and in either of said cases, upon conviction, shall be adjudged to have forfeited his or her office. [G. S. 1915, § 9492.]

§ 417. Soldiers and sailors or widows and orphans of deceased soldiers and sailors to be retained in making reduction of force in any departments, cities, etc. In making any reduction of force in any of the departments, cities or towns of this state, the officers of such department, city or town shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors. [G. S. 1915, § 9493.]

§ 418. Penalty for violation of preceding sections. Any person knowingly and willfully violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction fined not less than five dollars nor more than twenty-five dollars for each offense. [G. S. 1915, § 9494.]

CHAPTER 32.—PAROLED AND DISCHARGED PRISONERS.

§419. Exposing or threatening to expose, etc., paroled or discharged person for the purpose of depriving such person of employment, or preventing him from procuring the same, or for the purpose of extorting any money or article of value; misdemeanor; punishment.

LAWS OF 1915, CH. 249.

AN ACT relating to paroled and discharged prisoners and making it a misdemeanor to expose the same and providing a penalty therefor.

§ 419. Exposing or threatening to expose, etc., paroled or discharged person for the purpose of depriving such person of employment, or preventing him from procuring the same, or for the purpose of extorting any money or article of value; misdemeanor; punishment. Any person who maliciously and willfully communicates to another, either orally or in writing, any statement concerning any person then or theretofore convicted of a felony, and then either on parole or finally discharged, and which communication is made maliciously with the purpose and intent to deprive said person so convicted of employment, or to prevent him from procuring the same, or with the purpose and intent to extort from him any money or article of value; and any person who threatens to make any said communication with the purpose and intent to extort money or any article of value from said person so convicted of a felony, shall be guilty of a misdemeanor, and upon the conviction thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. [G. S. 1915, § 3820.]

CHAPTER 33.—PLUMBERS, EXAMINATION AND CERTIFICATION.

§420. Person engaged in or working at business of plumbing in cities of 7,000 or more, either as master plumber, employing plumber or journeyman plumber, must have certificate.

421. Person desiring to engage or work at business of plumbing in such cities to make application to board of examiners; compelled to pass examination as to qualifications; nature of examination.

422. Board of plumbers in every city of 7,000 or more; chairman of board of health *ex officio* chairman; appointment of other members of board; term of office; compensation.

423. Board of examiners to designate times and places for examination

of applicants; what examination shall cover; issuance of certificate; fee for certificate of master plumber or employing plumber; fee for journeyman plumber; certificate valid throughout the state; disposition of fees collected.

§424. Cities of over 7,000 to pass ordinances prescribing rules and regulations for materials, construction and inspection of all plumbing and sewerage; permit to be required before doing any plumbing work.

425. Application to be made to board where applicant resides, or to nearest board.

426. Person violating act deemed guilty of misdemeanor; penalty.

LAWS OF 1903, CH. 377.

AN ACT to create a board of examiners and regulate the business of plumbing in certain cities.

§ 420. Person engaged in or working at business of plumbing in cities of 7,000 or more, either as master plumber, employing plumber or journeyman plumber, must have certificate. That any person now or hereafter

engaging or working at the business of plumbing in cities of seven thousand population or more in this state, either as master plumber or employing plumber or as a journeyman plumber, shall first receive a certificate thereof in accordance with the provisions of this act. [G. S. 1915, § 985.]

§ 421. Person desiring to engage in or work at business of plumbing in such cities to make application to board of examiners; compelled to pass examination as to qualifications; nature of examination. Any person desiring to engage in or work at the business of plumbing, either as a master plumber or employing plumber or as a journeyman plumber, in cities having a population of seven thousand or more and a system of water supply or sewerage, shall make application to a board of examiners hereinafter provided for, and shall at such times and place as said board may designate be compelled to pass such examination as to his qualifications as said board may direct. Said examination may be made in whole or in part in writing and shall be of a practical and elementary character, but sufficiently strict to test the qualifications of the applicant. [G. S. 1915, § 986.]

§ 422. Board of plumbers in every city of 7,000 or more; chairman of board of health ex officio chairman; appointment of other members of board; term of office; compensation. That there shall be in every city of seven thousand inhabitants or more a board of examiners of plumbers consisting of three members, one of which shall be chairman of the board of health, who shall be *ex officio* chairman of said board of examiners; a second member, who shall be a master plumber; and a third member, who shall be a journeyman plumber. Said second and third members shall be appointed by the mayor and approved by the council of said city within three months after the passage of this act, for the term of one year from the 1st day of May in the year of appointment, thereafter annually before the 1st day of May, and shall be paid from the treasury of said city the same as other officers, in such sum as the authorities may designate. [G. S. 1915, § 987.]

§ 423. Board of examiners to designate times and places for examination of applicants; what examination shall cover; issuance of certificate; fee for certificate of master plumber or employing plumber; fee for journeyman plumber; certificate valid throughout the state; disposition of fees collected. Said board of examiners shall, as soon as may be after their appointment, meet, and shall then designate the times and places for examination of all applicants desiring to engage in or work at the business of plumbing within their respective jurisdiction. Said board shall examine said applicants as to the practical knowledge of plumbing, house drainage, and plumbing ventilation, and, if satisfied of the competency of such applicants, shall thereupon issue a certificate to such applicant, authorizing him to engage in or work at the business of plumbing, either as master plumber or employing plumber or as a journeyman plumber. The fee for a certificate for a master plumber or employing plumber shall be five dollars; for a journeyman plumber it shall be two dollars. Said certificate shall be valid and have force throughout the state; and all fees received for said certificates shall be paid into the treasury of the city where such certificates are issued. [G. S. 1915, § 988.]

§ 424. Cities of over 7,000 to pass ordinances prescribing rules and regulations for materials, construction and inspection of all plumbing and

sewerage; permit to be required before doing any plumbing work. Each city with a population of seven thousand or more in the state having a system of water supply or sewerage shall by ordinance, within three months of the passage of this act, prescribe rules and regulations for the materials, construction and inspection of all plumbing and sewerage placed in or in connection with any building in each city, and the board of health or proper authorities shall further provide that no plumbing work shall be done, except in case of repairing leaks, without a permit first being issued therefor upon such terms and conditions as such city shall prescribe. [G. S. 1915, § 989.]

§ 425. Application to be made to board where applicant resides, or to nearest board. All persons who are required by this act to take examinations and procure a certificate as required by this act shall apply to the board in the city where they reside, or to the board nearest their place of residence. [G. S. 1915, § 990.]

§ 426. Person violating act deemed guilty of misdemeanor; penalty. Any person violating any provision of this act shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five dollars nor exceeding fifty dollars for each and every violation thereof. [G. S. 1915, § 991.]

CHAPTER 34.—POLL TAX.

§427. Male persons between twenty-one and fifty years of age liable to payment of poll tax; use of money received; volunteer fire department; penalty for failure to pay tax; duty of officers to give notice; privilege of paying tax in labor; daily wage; payment not to be deferred beyond first Monday in September; report of officers to county clerk; delinquents certified to county treasurer; notice; tax warrants; payment in money; act not applicable to cities of over 80,000.

LAWS OF 1911, CH. 248, AS AMENDED BY LAWS OF 1917, CH. 267.

AN ACT concerning roads and highways, providing for a poll tax and certain exemptions therefor and providing penalties for the violation thereof and amending section 8790 of the General Statutes of 1915, and repealing the original section so amended.

§ 427. Male persons between twenty-one and fifty years of age liable to payment of poll tax; amount of tax; use of money received; volunteer fire department; penalty for failure to pay tax; duty of officers to give notice; privilege of paying tax in labor; daily wage; payment not to be deferred beyond first Monday in September; report of officers to county clerk; delinquents certified to county treasurer; notice; tax warrants; payment in money; act not applicable to cities of over 80,000. That all male persons between twenty-one and fifty years of age who have resided thirty days in this state and who are not a public charge shall be liable each year to pay the sum of three dollars to the township trustee or to the proper officer of the city in which such person lives, who shall receipt for the same and account therefor to the treasurer of the township or city and the same shall be expended on the public roads within the township or city in which such persons live. And all moneys so received by such treasurer shall be turned into the road fund for such township or city to be expended as above provided. Any city having a volunteer fire department may have the privilege of exempting the members of such department from paying the tax imposed by this section: *Provided*, That if any such person shall fail to pay such tax within thirty days after the receipt of a notice from the township trustee, or the

proper officer of the city, that said tax is due, the person so failing shall upon conviction thereof be adjudged guilty of a misdemeanor and fined in the sum of five dollars. And it is hereby made the duty of the township trustee or proper officer of the city to give such notice to every such person on or before the first day of August of each year, and every such officer who shall fail or refuse to give such notice shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$100 and may be removed from office in the manner provided by law: *Provided*, That nothing herein contained shall be construed to prevent the township trustee of any township from giving the person notified to pay such tax the privilege of paying the same in labor upon the highway at a time and place to be designated by said township trustee, provided such person is willing to so labor at a daily wage for himself of one dollar and half, or for himself and team of three dollars: *And provided further*, That all persons subject to the tax shall pay the same in money or discharge the same by labor as herein provided, whenever required so to do by the said township trustee, but in no event shall any such payment, either in money or labor, be deferred beyond the last Monday in September, on which date, every township trustee and proper officer in every city shall file with the county clerk of his county a report stating in detail the names of the persons notified under the provisions of this section and the method of payment required of each and the fact of payment, whether in money or labor, and such report shall also show the names of all persons notified of the demand made upon them under the provisions of this section who have failed to respond; and upon receipt of these reports the county clerk shall certify to the county treasurer the names of all persons who have defaulted in payment of the sum of three dollars as provided herein and the treasurer shall proceed to collect the same in the same manner as personal property taxes are collected upon default, after first having given the delinquent ten days' notice that unless payment is made a tax warrant will issue for the collection of the tax. The list of delinquents certified to the county treasurer shall be by townships and cities, and shall give the post-office address of each person in default, and shall be a list distinct and separate from the regular tax rolls. After taxes become delinquent herein the person from whom due shall no longer have the privilege of paying the same in labor, but must pay the same to the county treasurer in money. The county treasurer shall pay over to the township or city treasurer entitled thereto all moneys collected in the jurisdiction of any treasurer when demanded by such treasurer: *Provided, however*, That this act shall not apply to cities having a population of over 80,000. [G. S. 1915, § 8790, as amended by Laws 1917, ch. 267, § 1; April 5.]

Tax not collectible from residents of cities of first class. *City of Topeka v. Wasson*, 101 K. 824.

Cases construing section before latest amendment:

Officers of city authorized to expend tax imposed by section. *City of Emporia v. Griffith*, 86 K. 976.

Ordinance requiring payment of road tax not annulled by this act. *City of McPherson v. Hanson*, 88 K. 151.

Poll tax not collectible in cities of the first class. *Shane v. City of Hutchinson*, 88 K. 188.

Title of act broad enough to cover penalty imposed herein. *City of Winfield v. Bell*, 89 K. 96.

CHAPTER 35.—PUBLIC WORK, EIGHT-HOUR DAY.*

§428. Eight hours constitute a day's work for all laborers, workmen, mechanics, etc., employed on public work; exception in cases of extraordinary emergency; payment of wages on basis of eight-hour day; rate not less than current per diem wages in the locality; persons employed by contractors or subcontractors deemed employed on public work; exemption

of light and water plants in cities of second and third classes.

§429. Contracts deemed made on basis of eight hours constituting a day's work; contractor not to require or permit persons to work more than eight hours per day; exception.

430. Penalty for violation of two preceding sections by public officer, contractor, etc.

LAWS OF 1891, CH. 114, AS AMENDED BY LAWS OF 1913, CH. 220.

AN ACT constituting eight hours a day's work for all laborers, workmen, mechanics and other persons employed by or on behalf of the state of Kansas, or by or on behalf of any county, city, township or other municipality in said state, or by contractors or others doing work or furnishing material for the state of Kansas, or any county, city, township, or other municipality thereof, and providing penalties for violation of the provisions of this act.

§ 428. Eight hours constitute a day's work for all laborers, workmen, mechanics, etc., employed on public work; exception in cases of extraordinary emergency; payment of wages on basis of eight-hour day; rate not less than current per diem wages in the locality; persons employed by contractors or subcontractors deemed employed on public work; exemption of light and water plants in cities of second and third classes. That eight hours shall constitute a day's work for all laborers, workmen, mechanics or other persons now employed or who may hereafter be employed by or on behalf of the state of Kansas, or by or on behalf of any county, city, township or other municipality of said state, except in cases of extraordinary emergency, which may arise in time of war or in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life: *Provided*, That in all such cases the laborers, workmen, mechanics or other persons so employed and working to exceed eight hours per calendar day shall be paid on the basis of eight hours constituting a day's work: *Provided further*, That not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, and other persons so employed by or on behalf of the state of Kansas, or any county, city, township or other municipality of said state. And laborers, workmen, mechanics and other persons employed by contractors or subcontractors in the execution of any contract or contracts within the state of Kansas, or within any county, city, township or other municipality thereof, shall be deemed to be employed by or on behalf of the state of Kansas, or of such county, city, township or other municipality thereof: *Provided further*, That any cities of the second or third class owning or operating municipal light and water plants be and the same are hereby exempted from the provisions of this act. [G. S. 1915, § 5870.]

Provisions of this section not applicable to employees at penitentiary. *The State, ex rel., v. Martindale*, 47 K. 147.

Ordinance requiring more than eight hours, held invalid. *In re Ashby*, 60 K. 101. This section held constitutional and valid. *In re Dalton*, 61 K. 257.

**Suspension of federal eight-hour law in case of national emergency.* . . . "That in case of national emergency the President is authorized to suspend provisions of law prohibiting more than eight hours labor in any one day of persons engaged upon work covered by contracts with the United States: *Provided further*. That the wages of persons employed upon such contracts shall be computed on a basic day rate of eight hours work, with overtime rates to be paid for at not less than time and one-half for all hours of work in excess of eight hours." (This is from the naval appropriation act of March 4, 1917.)

Employees accepting regular wages estopped from claiming extra pay. *Beard v. Sedgwick County*, 63 K. 348.
Employees of contractor, making city improvements, come under this section. *The State v. Atkin*, 64 K. 174.

Affirmed by supreme court of United States, see *Atkin v. Kansas*, 191 U. S. 207.
Provisions of this section are applicable to a school district. *The State v. Wilson*, 65 K. 237.

Evidence held not to establish fact that defendant was paying less than the current rate of wages to its employees. *The State, ex rel., v. Construction Co.*, 99 K. 838.
Occasions on which employees worked more than eight hours per day held to be within exceptions named in this section. *The State, ex rel., v. Construction Co.*, 99 K. 838.

§ 429. Contracts deemed made on basis of eight hours constituting a day's work; contractor not to require or permit persons to work more than eight hours per day; exception. That all contracts hereafter made by or on behalf of the state of Kansas, or by or on behalf of any county, city, township, or other municipality of said state, with any corporation, person or persons, for the performance of any work or the furnishing of any material manufactured within the state of Kansas, shall be deemed and considered as made upon the basis of eight hours constituting a day's work; and it shall be unlawful for any such corporation, person or persons to require or permit any laborer, workman, mechanic or other person to work more than eight hours per calendar day in doing such work or in furnishing or manufacturing such material, except in the cases and upon the conditions provided in section 1 of this act. [G. S. 1915, § 5871.]

"Section 1 of this act," mentioned herein, is § 428, *supra*.

§ 430. Penalty for violation of two preceding sections by public officer, contractor, etc. That any officer of the state of Kansas, or of any county, city, township or municipality of said state, or any person acting under or for such officer, or any contractor with the state of Kansas, or any county, city, township or other municipality thereof, or other person violating any of the provisions of this act, shall for each offense be punished by a fine of not less than \$50 nor more than \$1000, or by imprisonment not more than six months, or both fine and imprisonment, in the discretion of the court. [G. S. 1915, § 5872.]

Laws 1891, ch. 114, § 4, provided that the act should not apply to existing contracts.

CHAPTER 36.—RAILROADS.*

Article 1. Bond from Contractor for Protection of Laborers, etc.

§§ 431, 432.

2. Clearance of Overhead Structures. §§ 433, 434.

3. Damages Caused by Negligence of Agents, etc. §§ 435-437.

4. Damages from Neglect on Part of Railroad Company. § 438.

5. Destroying or Injuring Railroad Property, etc. §§ 439-442.

* *Accidents upon premises of common carriers, etc.* (The following is from the public utilities act of 1911): "Every common carrier and every public utility governed by the provisions of this act shall, whenever an accident attended with loss of human life or serious personal injury occurs upon its premises within this state, give immediate notice thereof by telegraph to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith, in connection with the labor commission, as now provided by law, which investigation shall be held in the locality of the accident, unless for greater convenience of those concerned it shall order such investigation to be held at some other place. Said investigation may be adjourned from place to place as may be found necessary and convenient. The commission shall seasonably notify an officer or agent of the public utility or common carrier of the time and place of the investigation." [G. S. 1915, § 8360.]

For act requiring report of accidents to state factory inspector, and providing for investigation, etc., by such inspector, see §§ 11-14, *ante*.

6. Flagman Stationed to Protect Trains, etc. §§ 443-446.
7. Free Passes, etc. §§ 447-454.
8. Frogs, Switches, and Guard-rails, Filling, etc. §§ 455, 456.
9. Headlights on Locomotives, Requirements. §§ 457, 458.
10. Hours of Labor. §§ 459, 460.
11. Injury to or Death of Employee, Liability of Railroad Company. §§ 461-466.
12. Interlocking or Automatic Signals at Crossings. § 467.
13. Journal Brass, Penalty for Removal. §§ 468, 469.
14. Obstructing Operation of Railroad. §§ 470-473.
15. Passengers on Freight Trains. §§ 474-476.
16. Pilot for Detoured Trains. §§ 477, 478.
17. Shelter for Laborers Constructing or Repairing Equipment. §§ 479, 480.
18. Street Railway, etc., across Tracks of Railroad. §§ 481, 482.
19. Switch Lights and Lights Controlling Movements of Trains. §§ 483-485.
20. Way Cars or Cabooses, Size and Construction. §§ 486-488.
21. Wires Crossing Tracks of Railroad. §§ 489-491.

ARTICLE 1.—Bond from Contractor for Protection of Laborers, Etc.

§431. Railroad company contracting for construction of road to take bond from contractor for protection of laborers, mechanics, materialmen, etc.; bond to be filed in each

county; railroad company liable when bond not taken.

§432. Suit may be brought on such bond by all persons mentioned in preceding section.

LAWS OF 1872, CH. 136.

§ 431. Railroad company contracting for construction of road to take bond from contractor for protection of laborers, mechanics, materialmen, etc.; bond to be filed in each county; railroad company liable when bond not taken. That whenever any railroad company shall contract with any person for the construction of its road or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics and materialmen, and persons who supply such contractor with provisions or goods of any kind, all just debts due to such persons, or to any person to whom any part of such work is given, incurred in carrying on such work; which bond shall be filed by such railroad company in the office of the register of deeds in each county where the work of such contractor shall be. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor. [G. S. 1915, § 8453.]

Railroad company is proper obligee in bond. *Atchison, T. & S. F. R. Co. v. Cuthbert*, 14 K. 212.

Bond not vitiated by added stipulation. *Atchison, T. & S. F. R. Co. v. Cuthbert*, 14 K. 212.

Liability statutory: party must show all facts required by statute. *Atchison, T. & S. F. R. Co. v. Cuthbert*, 14 K. 212.

Section applies to contract for work on additions and extensions. *Missouri, K. & T. Ry. Co. v. Brown*, 14 K. 557.

Company failing to take bond; person to whom company liable. *Missouri, K. & T. Ry. Co. v. Brown*, 14 K. 557.

Proof of facts necessary to show that builder was "contractor." *Atchison, T. & S. F. R. Co. v. McConnell*, 25 K. 370.

Obligors not liable for provisions furnished to laborers employed. Wells v. Mehl, 25 K. 205; St. Louis, K. & A. Ry. Co. v. Cobb, 25 K. 388.
 Laborers and mechanics employed by subcontractor within protection of section. Mann v. Corrigan, 28 K. 194.
 Company not liable for provisions or goods furnished to subcontractor. St. L. W. & W. Ry. Co. v. Ritz, 30 K. 30.
 Railroad taking bond not liable; filing not essential to immunity. Mann v. Burt, 35 K. 10.
 Teamster is laborer within meaning of section. Mann v. Burt, 35 K. 10.
 Company not chargeable with debts due for labor of teams. Mann v. Burt, 35 K. 10.
 Provisions not going into construction of road; liability of company. Parkinson & Co. v. Alexander, 37 K. 110.
 Liability of sureties on bond of contractor, considered. Parkinson & Co. v. Alexander, 37 K. 110.
 Bond compared with bond of contractor on public work. Griffith v. Stucker, 91 K. 51.
 Application of payments made by subcontractor to materialman, considered; right of materialman to sue on bond, considered. Crane Co. v. Terminal Railway Co., 98 K. 336.
 Act or omissions of obligee or of contractor for which laborers, etc., are not responsible will not relieve guaranty company from liability to laborers, mechanics and materialmen. Asphalt Co. v. Building Co., 99 K. 567.
 Change in manner of payment held not to relieve guaranty company from liability on bond. Asphalt Co. v. Building Co., 99 K. 567.
 Sufficiency of petition in action on bond, considered. Sheahan v. Guaranty Co., 99 K. 704.

§ 432. Suit may be brought on such bond by all persons mentioned in preceding section. All such persons mentioned in the first section of this bill shall have a right of action on the bond provided for in the first section of this act, for the full awards of debts against such contractor. [G. S. 1915, § 8454.]

ARTICLE 2.—Clearance of Overhead Structures.

§433. Unlawful to erect, etc., any overhead crossing or viaduct over tracks or right of way of railroad company without clearance of 22 feet.

§434. Attorney-general to bring action to enjoin erection of unlawful structure on complaint of any citizen.

LAWS OF 1915, CH. 281.

AN ACT for the protection of railway employees, and fixing a minimum clearance of structures over railroad tracks.

§ 433. Unlawful to erect, etc., any overhead crossing or viaduct over tracks or right of way of railroad company without clearance of 22 feet. It shall be unlawful for any person, corporation or municipality to erect, build or construct any overhead crossing or viaduct over and across the tracks or right of way of any railroad or railway company, without providing a clear space or clearance of not less than 22 feet from the top of the rail or rails of such railroad or railway tracks to the lowest girder under said elevated structure. [G. S. 1915, § 8706.]

§ 434. Attorney-general to bring action to enjoin erection of unlawful structure on complaint of any citizen. It shall be the duty of the attorney-general, on complaint of any citizen of the state that such unlawful structure is being erected, to bring an action in the name of the state, in any court of competent jurisdiction, to enjoin the erection of any such structure not having the clearance provided for in section 1. [G. S. 1915, § 8707.]

ARTICLE 3.—Damages Caused by Negligence of Agents, Etc.

§435. Railroad companies liable for damages to employees; notice in writing within eight months; action within such time; person prevented from giving notice within time; death within such period; what notice must state.

§436. Service of such notice; persons upon whom such service may be made; proof of such service.

437. Repeal of Laws of 1905, ch. 341.

LAWS OF 1874, CH. 93, AS AMENDED BY LAWS OF 1903, CH. 393, LAWS OF 1905, CH. 341, AND LAWS OF 1907, CH. 281.

§ 435. Railroad companies liable for damages to employees; notice in writing within eight months; action within such time; person prevented from giving notice within time; death within such period; what notice must state. Every railroad company organized or doing business in the state of Kansas shall be liable for all damages done to any employee of said company in consequence of any negligence of its agents, or by any mismanagement of its engineers or other employees, to any person sustaining such damage: *Provided*, That notice in writing that an injury has been sustained, stating the time and place thereof, shall have been given by or on behalf of the person injured, to such railroad company within eight months after the occurrence of the injury: *Provided, however*, That where an action is commenced by the injured person within said eight months, it shall not be necessary to give said notice: *And provided further*, That where any person injured is in the hospital of or under the charge of the railroad company causing the injury, or is prevented by the effects of said injury, the said eight months shall not begin to run until such injured person is discharged from said hospital or care of said railroad company or until such disability be removed: *Provided further*, That in case said injured person shall die, as a result of said injuries, within said eight months, it shall not be necessary to give said notice: *Provided further*, That said notice need not state whether or not suit is intended to be brought. [G. S. 1915, § 8477.]

This section not repealed by Laws 1911, ch. 218 (workman's compensation act). See § 602, *post*.

Cases construing Laws 1874, ch. 93:

- Negligence not presumed but must be alleged and proved. *U. P. Rly. Co. v. Mahaffy*, 4 K. A. 88.
 - Injury on hand car while returning from work; railroad liable. *Union Trust Co. v. Thomason*, 25 K. 1.
 - Statute held valid; statute adopted from Iowa; decisions applicable. *Missouri Pac. Rly. Co. v. Haley*, 25 K. 35.
 - Act must be that of agent or employee having authority. *Solomon Rld. Co. v. Jones*, 30 K. 601.
 - Two-year statute of limitations applies to actions brought hereunder. *A. T. & S. F. Rld. Co. v. King*, 31 K. 708.
 - Section does not deny equal protection of the law; held valid. *Mo. Pac. Rly. Co. v. Mackey*, 33 K. 298.
 - Incompetence of coemployee; defective materials; when risk assumed by employee. *K. P. Rly. Co. v. Peavey*, 34 K. 472.
 - Rules of contributory negligence not abolished by this act. *K. P. Rly. Co. v. Peavey*, 34 K. 472.
 - Question of negligence considered; held doubtful whether any negligence shown. *C. K. & N. Rly. Co. v. Brown*, 44 K. 384.
 - Negligence of coemployee; bridge carpenter, injured loading timbers, may recover. *C. K. & W. Rld. Co. v. Pontius*, 52 K. 264.
 - Liability of receiver determined by rules applicable to railroad company. *Rouse v. Harry*, 55 K. 589.
 - Action barred, not revived by ingrafting upon action not barred. *A. T. & S. F. Rld. Co. v. Schroeder*, 56 K. 731.
 - Liability for injury of employee as between corporation and receivers. *Railway Co. v. Bricker*, 65 K. 321.
 - Student brakeman held to be employee of railway company. *Railway Co. v. Fronk*, 74 K. 519.
 - Contract releasing company from liability for negligence held void. *Railway Co. v. Fronk*, 74 K. 519.
 - Railroad company liable to express messenger for negligence regardless of release. *Sewell v. Railway Co.*, 78 K. 16.
 - Section held constitutional and valid. *Mo. Pac. Rly. Co. v. Mackey*, 127 U. S. 205.
- Cases construing Laws 1903, ch. 393:
- Assumption of risk and contributory negligence of employee, considered. *Railroad Co. v. Burgess*, 72 K. 454.
 - Injury to employee; negligence of fellow-servant; statutory liability of master. *Railway Co. v. Green*, 75 K. 504.

- Requirement of notice applies only to actions brought under statute. *Railroad Co. v. Little*, 75 K. 716.
- Contributory negligence shown by statement attached to petition; recovery barred. *Railway Co. v. Schroll*, 76 K. 572.
- Case construing Laws 1905, ch. 341:
- Statements made by employee in notice, etc., may be considered. *Railway Co. v. Hastings*, 79 K. 499.
- Cases construing Laws 1907, ch. 281:
- Section man injured by fellow laborer within protection of act. *Smith v. Railway Co.*, 82 K. 248.
- Allegation concerning notice considered surplusage where notice not required. *Young v. Railway Co.*, 82 K. 332.
- Statute excludes application of fellow-servant rule. *Brooks v. Railway Co.*, 95 K. 732.
- The practice of procuring or attempting to procure for a nominal sum a release from one still suffering from the excitement and pain of a recent injury is not to be encouraged or judicially approved. *Orr v. Railway Co.*, 98 K. 120.

§ 436. Service of such notice; persons upon whom service may be made; proof of such service. The service [notice] mentioned in section 1 hereof may be served by a written copy thereof, by the person injured or any one on his behalf, upon any person designated by the railroad in any county in which the action might be brought, as provided in section 4499 of the General Statutes of Kansas of 1901, or if no such person has been designated or appointed, as in said section provided, then upon any local superintendent of affairs, freight agent, agent to sell tickets, or station keeper of such company or corporation in such county, or such service may be made by leaving a copy thereof at any depot or station of such company or corporation in such county, with the person in charge thereof or in the employ of such company or corporation, and such service shall be held and deemed complete and effectual. Proof of such service shall be made by the affidavit of the party making the same, or other persons knowing the facts. [G. S. 1915, § 8478.]

"Section 4499 of the General Statutes of Kansas of 1901," mentioned herein, was § 68a of the former civil code, the general provisions of which are contained in § 71 of the code of 1909, printed as § 6962 of the General Statutes of 1915.

- Notice mailed to assistant claim agent and acted upon, sufficient. *Smith v. Railway Co.*, 82 K. 248.
- Notice may be served by delivering copy to station agent. *Dowell v. Railway Co.*, 93 K. 562.
- Annotation to L. 1905, ch. 341:
- Notice may be served upon ticket agent of the company. *Railroad Co. v. Burgess*, 72 K. 454.

§ 437. Repeal of Laws of 1905, ch. 341. Chapter 341 of the Session Laws of 1905 is hereby repealed. [G. S. 1915, § 8479.]

ARTICLE 4.—Damages from Neglect on Part of Railroad Company.

§438. Railroads liable for damages to person or property caused by neglect.

LAWS OF 1870, CH. 93.

§ 438. Railroads liable for damages to person or property caused by neglect. That railroads in this state shall be liable for all damages done to person or property, when done in consequence of any neglect on the part of the railroad companies. [G. S. 1915, § 8476.]

- Statute applied; section held to govern liability for damages. *St. L. & S. F. Rly. Co. v. Fruit Co.*, 1 K. A. 551.
- Negligence must be alleged and proved under this section. *A. T. & S. F. Rld. Co. v. Ditmars*, 3 K. A. 459.
- Section does not abolish fellow-servant rule; negligence between coemployees. *K. P. Railway v. Salmon*, *Adm'x*, 11 K. 83.
- Section has changed law; instruction concerning exercise of ordinary care. *St. Jos. & D. C. Rld. Co. v. Grover*, 11 K. 302.
- Section has not wiped out defense of contributory negligence. *K. C. Ft. S. & G. Rld. Co. v. McHenry*, 24 K. 501.
- Duty of railroad company to passengers; sick or insane passenger. *A. T. & S. F. Rld. Co. v. Weber*, *Adm'r*, 33 K. 543.

Railroad company responsible for damages negligently done to stock. *L. & W. Rld. Co. v. Ross*, 40 K. 609.
 Express messenger may recover for injuries from negligence; release disregarded. *Sewell v. Railway Co.*, 78 K. 16.
 Effect of section discussed. *Sewell v. Railway Co.*, 78 K. 21.
 Stipulation in lease exempting railroad company from liability, held valid. *Grain Co. v. Railway Co.*, 94 K. 590.
 Assumption of risk and contributory negligence, considered. *Harper v. Railway Co.*, 95 K. 201.
 "The practice of procuring or attempting to procure for a nominal sum a release from one still suffering from the excitement and pain of a recent injury is not to be encouraged or judicially approved." *Orr v. Railway Co.*, 98 K. 120.
 Railroad held liable to trespasser only for willful neglect. *Malott v. Railroad Co.*, 99 K. 115.

ARTICLE 5.—Destroying or Injuring Railroad Property, Etc.

§439. Destroying or injuring railroad tracks, bridges, etc., or placing obstructions thereon: punishment; punishment when death occasioned by such acts.

440. Willfully injuring or destroying rails, sills, cross-ties, etc., or embankment of railroad; punishment.

§441. Willfully injuring or destroying locomotive, car, etc., in use, or water station, etc., of railroad; punishment.

442. Aiding or abetting in commission of offenses named in three preceding sections; punishment; liability of person committing such acts, to railroad company or persons injured thereby, for damages sustained.

PART OF GENERAL STATUTES OF 1868, CH. 31, AS AMENDED BY LAWS OF 1897, CH. 122.

§ 439. Destroying or injuring railroad tracks, bridges, etc., or placing obstructions thereon; punishment; punishment when death occasioned by such acts. Any person or persons who shall willfully remove, break, displace, throw down, destroy, or in any manner injure any iron, wooden or other kind of rail or other branches or branch ways, or any part of the tracks, or any bridge, viaduct, culvert, embankment, parapet, switch, or other fixtures or any part thereof attached to or connected with the track or tracks, of any railroad in the state, in actual operation, or in the course of construction, or which shall hereafter be constructed or put in operation, or who shall willfully place any obstruction upon the rails or track of any such railroad, shall on conviction thereof be punished by confinement at hard labor in the penitentiary not less than five nor more than ten years: *Provided*, That if any person or persons shall, by the commission of either or any of the aforesaid offenses, occasion the death of any person or persons, the person or persons so offending shall upon conviction be deemed guilty of murder in the first degree, and shall be punished as now provided by law for the punishment of murder in the first degree. [G. S. 1915, § 3483.]

§ 440. Willfully injuring or destroying rails, sills, cross-ties, etc., or embankment of railroad; punishment. Any person who shall willfully throw down, break, remove, displace, cut, split, burn, or in any manner destroy or injure any of the rails, sills, switches, cross-ties, piles, bridges, culverts, viaducts, parapets, or any other fixture of any railroad, or shall willfully injure or destroy any embankment of any railroad within this state, now constructed or in process of construction, or of any railroad which shall hereafter be constructed or be in process of construction in this state, shall on conviction thereof be punished by confinement and hard labor in the penitentiary not less than one nor more than three years. [G. S. 1915, § 3484.]

§ 441. Willfully injuring or destroying locomotive, car, etc., in use, or water station, etc., of railroad; punishment. Every person who shall will-

fully cut, break, burn, injure or destroy any locomotive, car, or other machinery which now is or which may hereafter be in use upon any railroad in this state, or any wood-house, car or water station erected for the accommodation and use of any railroad within this state, shall on conviction thereof be punished by confinement and hard labor in the penitentiary not less than one nor more than three years. [G. S. 1915, § 3485.]

This section does not cover breaking street-car window. *The State v. Cain*, 69 K. 186.

§ 442. Aiding or abetting in commission of offenses named in three preceding sections; punishment; liability of person committing such acts, to railroad company or persons injured thereby, for damages sustained. Every person who shall willfully counsel, advise or assist, aid or abet any other person in commission of any of the offenses named in the three preceding sections of this act, shall upon conviction thereof be punished in the same manner as the principal offender would have been upon conviction: *Provided*, That any railroad company whose property shall be destroyed or injured by any of the acts or offenses mentioned in the three aforesaid sections, or any person who shall be injured by any of the acts aforesaid, shall have a right of action against any person or persons committing any of the acts or offenses mentioned in the said three sections of this act; and such person or persons committing any of such acts or offenses shall be liable for all damages so sustained. [G. S. 1915, § 3486.]

ARTICLE 6.—Flagman Stationed to Protect Trains, etc.

§443. Flagman required to be stationed to protect engines, trains or cars obstructing main tracks.

444. Trains, engines and cars on main tracks to be protected by flagman regardless of use of manual or automatically controlled block system or signal; flagman to have visible and audible signals.

§445. Penalty for violation of two preceding sections.

446. Flagman, switchman or employee receiving orders to protect train guilty of misdemeanor for accident occurring by failure, refusal or neglect; punishment.

LAWS OF 1913, CH. 251.

AN ACT requiring trains to be protected by a competent flagman and prescribing penalties for the violation thereof.

§ 443. Flagman required to be stationed to protect engines, trains or cars obstructing main tracks. That all persons or corporations operating railroads in the state of Kansas, are hereby required to protect engines trains or cars which may at any time obstruct main tracks over which scheduled trains or trains under special orders are operated or run, by stationing a reliable and competent flagman in such a position as to stop approaching trains. [G. S. 1915, § 8492.]

§ 444. Trains, engines and cars on main track to be protected by flagman regardless of use of manual or automatically controlled block system or signal; flagman to have visible and audible signals. That when any train or trains, engines or cars are obstructing any main line or other tracks that are being used for main line purposes they shall be protected against approaching trains at all times regardless of the use of any manual or automatically controlled block system or signal, or any yard limit board, by a reliable and competent flagman with both visible and audible signals. [G. S. 1915, § 8493.]

§ 445. Penalty for violation of two preceding sections. That any person, firm or corporation operating a railroad in whole or in part

in the state of Kansas violating any provision of this act shall be deemed guilty of a misdemeanor and fined in the sum of not less than one (\$100) hundred dollars nor more than one (\$1000) thousand dollars for each offense. [G. S. 1915, § 8494.]

§ 446. Flagman, switchman or employee receiving orders to protect train guilty of misdemeanor for accident occurring by failure, refusal or neglect; punishment. That any flagman, switchman, or other employee who has received orders from his superior for to protect his train, as prescribed for in section 1 and 2 of this act, and any accident occurring by the failure, refusal, or neglect of such employee, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum of not less than \$10 or more than \$50 for each offense. [G. S. 1915, § 8495.]

ARTICLE 7.—Free Passes, Etc.

§ 447. Unlawful for railroad company to issue, give or offer to issue or give, any free pass, ticket or transportation to any person other than those specified herein; unlawful for any other person to solicit, accept or use any such free pass, etc.

448. Penalty for issuing, giving, delivering or offering to issue or give any free pass, etc., to person not authorized to accept and use the same; penalty for soliciting, accepting or using free pass, etc., by person not authorized by this act to accept and use same.

449. Persons included by word "employee" as used in this act; persons excluded; exception as to local attorney, physician and surgeon.

§ 450. Persons included by word "family" as used in this act; others excluded.

451. Free passes, tickets or transportation not prohibited during prevalence of epidemic, pestilence or catastrophe when necessary, etc.

452. Act not to prohibit excursion rates open to the public generally, reduced fare to ministers of the gospel, religious, benevolent or charitable workers, inmates of soldiers' homes and members of G. A. R.; not to affect rate for militia.

453. Device, subterfuge or arrangement deemed violation of act; punishment of officer, agent or employee of company and person receiving concession, advantage, reduction or rebate.

454. Repeal of acts in conflict herewith.

LAWS OF 1907, CH. 273, AS AMENDED BY LAWS OF 1917, CH. 260.

AN ACT prohibiting the issuance of any free passes, tickets or transportation by any railroad company or other common carrier, and prohibiting the use of the same and prescribing penalties for its violation.

§ 447. Unlawful for railroad company to issue, give, or offer to issue or give, any free pass, ticket or transportation to any person other than those specified herein; unlawful for any other person to solicit, accept or use any such free pass, etc. It shall be unlawful for any railroad company to issue, give, or offer to issue or give, any free pass, ticket or transportation, in any form, to passengers, for use upon its lines within this state, except to its officers and directors and employees and their families; the officers, directors and employees of other railroads and their families; the employees of express, telegraph, telephone and sleeping-car companies and their families; a representative from each of the labor organizations of employees of the railway companies; railway employees incapacitated by reason of disease or injury incurred or received in the employ of the company issuing such pass; ex-railway employees who have been engaged in the employ of a railway company continuously for fifteen years and placed on the retired list, and their families; railway hospital employees; also ex-employees seeking employment in the railway service; also messengers and clerks in the railway mail service; news agents while selling papers, books, magazines, fruit, confectionery, etc., on the

train; members of the public utilities commission and their attorney, together with all other officers and employees of said board; persons injured by wrecks or by accidents, and doctors, nurses and necessary attendants in caring for such injured persons, to be used only in visiting employees and their families or accompanying employees to railroad hospitals; caretakers of stock, poultry or fruit in carload lot or lots, to destination and returning therefrom; sheriffs and one undersheriff and chief of police in cities of the first class; indigent, destitute or homeless persons whose dependent condition is certified to by the mayor, commissioner of the poor, or the chairman of the board of county commissioners; and it shall be unlawful for any person, other than the above excepted persons, to solicit, accept or use any such free pass, ticket or transportation. [G. S. 1915, § 8621, as amended by Laws 1917, ch. 260, § 1; May 26.]

§ 448. Penalty for issuing, giving, delivering or offering to issue or give any free pass, etc., to person not authorized to accept and use the same; penalty for soliciting, accepting or using free pass, etc., by person not authorized by this act to accept and use same. Any officer, agent or employee of any railroad company doing business within this state who issues, gives or delivers, or offers to issue or give, any free pass, ticket or transportation to any person not authorized to accept and use the same by this act, shall be deemed guilty of a misdemeanor, and punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment; and any person not authorized by this act to accept and use such pass, ticket or transportation who solicits, for himself or others, or accepts or uses the same, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment. [G. S. 1915, § 8622.]

§ 449. Persons included by word "employee" as used in this act; persons excluded; exception as to local attorney, physician and surgeon. The word "employee," as used in this act, shall be construed to include all persons who devote their principal time, skill and energy to the service of the railroad company by which they are employed, and who receive a stated and remunerative salary therefor, and to exclude all others who do not depend primarily upon such employment for a livelihood, except one local attorney, physician and surgeon in any one county, through or in which said railroad issuing such pass has a line of road. [G. S. 1915, § 8623.]

§ 450. Persons included by word "family" as used in this act; others excluded. The word "family," as used in this act, shall be construed to include the employee, his wife, and minor children, immediate members of his household and dependent on him for support, and to exclude all others. [G. S. 1915, § 8624.]

§ 451. Free passes, tickets or transportation not prohibited during prevalence of epidemic, pestilence or catastrophe, when necessary, etc. The terms of this act shall not be construed as prohibiting the issuance, acceptance or use of free passes, tickets or transportation during the prevalence of an epidemic, pestilence, or catastrophe, when necessary to afford relief or to mitigate the evil effects of such calamitous visitation. [G. S. 1915, § 8625.]

§ 452. Act not to prohibit excursion rates open to the public generally, reduced fare to ministers of the gospel, religious, benevolent or charitable

workers, inmates of soldiers' homes and members of G. A. R.; not to affect rate for militia. The provisions of this act shall not be construed as prohibiting excursion rates, open to the public generally, reduced fare to ministers of the gospel and those giving their entire time to religious, benevolent or charitable work, or to the inmates of soldiers' homes, state or national, including those about to enter and those returning home after their discharge, and members in good standing in the Grand Army of the Republic: *Provided, however*, This act shall not affect any rate now provided by law for the transportation of members of the Kansas national guard. [G. S. 1915, § 8626.]

§ 453. Device, subterfuge or arrangement deemed violation of act; punishment of officer, agent or employee of company and person receiving concession, advantage, reduction or rebate. Any device, subterfuge or arrangement by which any passenger received a concession, advantage, reduction or rebate not accorded to all other passengers, exclusive of the excepted classes hereinbefore enumerated, shall be deemed a violation of this act, and the officer, agent or employee of the railroad company granting, or offering to grant or give, and the person soliciting or accepting the same, shall be punished as provided in section 2 for a direct violation of the provisions of this act. [G. S. 1915, § 8627.]

§ 454. Repeal of acts in conflict herewith. All acts or parts of acts in conflict with the provisions of this act are hereby repealed. [G. S. 1915, § 8628.]

ARTICLE 8.—Frogs, Switches and Guard-rails, Filling, Etc.

§ 455. Frogs, switches and guard-rails to be filled, blocked and guarded.

§ 456. Liability for violation of preceding section in addition to liability to person injured or his legal representative; misdemeanor; penalty; failure for thirty days to comply with act a separate offense.

LAWS OF 1907, CH. 188.

AN ACT requiring railroad companies to fill, block and guard frogs, switches and guard-rails, for the protection of its employees and others, and providing penalties for the violation thereof.

§ 455. Frogs, switches and guard-rails to be filled, blocked and guarded. In order to guard against accidental injury to the employees and others, every railroad company operating a railroad in the state of Kansas shall cause all its frogs, switches and guard-rails on its track or tracks in this state to be filled, blocked and guarded in a practical manner. [G. S. 1915, § 8503.]

§ 456. Liability for violation of preceding section in addition to liability to person injured or his legal representative; misdemeanor; penalty; failure for thirty days to comply with act a separate offense. Any such company violating section 1, in addition to its liability to any person injured or to his legal representative, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars nor more than two hundred dollars; and any neglect or failure to comply with the provisions of this act to fill, block or guard any frog, switch or guard-rails, as required in section 1 of this act, for a period of thirty days, shall constitute a separate offense. [G. S. 1915, § 8504.]

"Section 1 of this act," mentioned herein, is § 455, *supra*.

ARTICLE 9.—Headlights on Locomotives, Requirements.

§457. Locomotive engines to be equipped with headlights; power of headlight required; conditions under which visibility measured; act not to apply to certain engines.

§458. Penalty for violation of preceding section, or officer of company, etc., permitting violation; acts construed complete misdemeanor.

LAWS OF 1911, CH. 241.

AN ACT requiring all railroad corporations or receivers or lessees operating a line of railway in the state of Kansas to equip their locomotive engines with a headlight of a certain power or brilliancy and providing a penalty for a violation of this act.

§ 457. Locomotive engines to be equipped with headlights; power of headlight required; conditions under which visibility measured; act not to apply to certain engines. That on and after January 1, 1912, it shall be the duty of every company, corporation, lessee, manager, or receiver owning or operating a railroad in the state of Kansas to equip and maintain and use upon each and every locomotive engine being operated in road service within the state of Kansas a headlight of a power that will outline the figure of a man on or adjacent to the track, plainly visible at a distance of 800 feet, preceding the locomotive. The visibility herein mentioned is understood to be measured by and under ordinary night conditions, and for the normal sight of a person having the usual visual capacity required of a locomotive engineer at his place in charge of a moving locomotive: *Provided*, That this act shall not apply to engines running not more than ten miles into the state to complete their runs: *And provided further*, That this act shall not apply to locomotive engines used in regular switching service: *And provided further*, That this act shall not apply to locomotive engines used exclusively between sun up and sun down, nor on engines going to or returning from repair shops when ordered to such shops for repair. [G. S. 1915, § 8515.]

Duty of trainmen to observe horses, etc., upon track, considered. *Emery v. Railway Co.*, 96 K. 769.

§ 458. Penalty for violation of preceding section, or officer of company, etc., permitting violation; acts construed complete misdemeanor. Any railroad company or the receiver, lessee, manager or superintendent thereof, violating the provisions of section 1 of this act, or who permits this act to be violated when within his official authority to prevent its violation, shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars, nor more than five hundred dollars for each offense, and the operation of one engine for any part of one day in violation of this act shall be construed to be a complete misdemeanor. [G. S. 1915, § 8516.]

ARTICLE 10.—Hours of Labor.*

§459. Unlawful to require or permit conductor, engineer, fireman, brakeman, train-dispatcher, telegraph operator or trainman to continue on duty more than sixteen consecutive hours; eight hours' rest; cases in which act shall not apply; not applicable to employees of sleeping-car companies, baggagemen and express messengers.

§460. Penalty for violation of preceding section: action brought by attorney-general or prosecuting attorney of proper county; complaint to commissioner of labor; authority of commissioner in making investigation; commissioner to file complaint before county attorney of proper county.

* Federal act concerning hours of service of railway employees engaged in interstate commerce:

"It shall be unlawful for any common carrier, its officers or agents, subject to this act to require or permit any employee subject to this act to be or remain on duty for a

§ 459. Unlawful to require or permit conductor, engineer, fireman, brakeman, train-dispatcher, telegraph operator or trainman to continue on duty more than sixteen consecutive hours; eight hours' rest; cases in which act shall not apply; not applicable to employees of sleeping-car companies, baggagemen and express messengers. It shall be unlawful for any corporation or receiver operating a line of railroads [railroad] in whole or in part in the state of Kansas, for any officer, agent or representative of such corporation or receiver, to require or permit any conductor, engineer, fireman, brakeman, train-dispatcher, telegraph operator or any trainman who has worked in his respective capacity for sixteen consecutive hours, to continue on duty or perform any work for such railroad until he has had at least eight hours' rest: *Provided*, That this act shall not apply in case of washout, wrecks, or unavoidable blockades, nor shall it be construed to prevent the crew of a train which contains live stock or perishable freight in carload lots from running to the next division point after the expiration of the time limit provided for in this act: *Provided further*, That this section shall not apply to employees of sleeping-car companies, baggagemen, and express messengers. [G. S. 1915, § 8588.]

§ 460. Penalty for violation of preceding section; action brought by attorney-general or prosecuting attorney of proper county; complaint to commissioner of labor; authority of commissioner in making investigation; commissioner to file complaint before county attorney of proper county. Any corporation or receiver operating a line of railroad in whole or in part in this state who shall knowingly violate any provisions of this act shall be liable to the state of Kansas for a penalty of not less than one hundred dollars nor more than two hundred dollars for each offense, and such penalties shall be recovered and suits thereof shall be brought in the name of the state of Kansas in a court of competent jurisdiction in any county in the state into or through which any such railroad may run, by the attorney-general or under his direction, or by the prosecuting attorney of the proper county through or into or out of which trains may be operated by said company; and upon complaint being made to the commissioner of labor, he is thereby authorized to investigate such complaint, and shall be empowered to examine the train-sheets, registers, and dispatchers' reports, and to hear such other evidence as may be offered by officers or employees of such railroad company, to determine whether such complaint is well founded; and if the complaint appears to be

longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: *Provided*, That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: *Provided further*, The Interstate Commerce Commission may after full hearing in a particular case and for good cause shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case."

The act provides a penalty of "not less than \$100 nor more than \$500 for each and every violation," by "any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation" of the provisions of the act.

well founded, it shall be the duty of said commissioner of labor to file a complaint before the county attorney of the proper county through which said company may operate. [G. S. 1915, § 8589.]

ARTICLE 11.—Injury to or Death of Employee, Liability of Railroad Company.

§461. Liability of railroad company to person suffering injury while employed by company or in case of death of employee; persons to whom railroad held liable.

462. Contributory negligence of employee not a bar to recovery under this act; damages diminished by jury in proportion to negligence of employee; employee held not to have been guilty of contributory negligence where railroad violating federal or state statute for safety of employees.

§463. Employee held not to have assumed risk of employment where violation of federal or state statute for safety of employees contributed to injury or death.

464. Contract, rule, regulation, etc., to evade provisions of act, void; carrier may set off sum paid to insurance, relief, benefit or indemnity of injured employee, etc.

465. Right of action under act survives to personal representatives; only one recovery for same injury.

466. Repeal of acts in conflict herewith.

LAWS OF 1911, CH. 239.

AN ACT relating to the liability of common carriers by railroads to their employees in certain cases, and repealing all acts and parts of acts so far as the same are in conflict herewith.

§ 461. Liability of railroad company to person suffering injury while employed by company or in case of death of employee; persons to whom railroad held liable. That every company, corporation, receiver or other person operating any railroad in this state shall be liable in damages to any person suffering injury while he is employed by such carrier operating such railroad or in case of the death of such employee, to his or her personal representative for the benefit of the surviving widow and children, or husband and children, or children, or mother or father of the deceased, and if none, then the next of kin dependent upon such employee for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier: or by reason of any insufficiency of clearance of obstructions, of strength of roadbed and tracks or structure, of machinery and equipment, of lights and signals, or rules and regulations and of number of employees to perform the particular duties with safety to themselves and their coemployees, or of any other insufficiency, or by reason of any defect, which defect is due to the negligence of said employer, its officers, agents, servants or other employees in its cars, engines, motors, appliances, machinery, track, roadbed, boats, works, wharves, or other equipment. [G. S. 1915, § 8480.]

This act not repealed or affected by workmen's compensation act. See § 602, *post*. "Clearance of obstructions," defined; projecting rail not an obstruction. *Palomino v. Railway Co.*, 91 K. 556.

Finding of negligence of coemployee sufficient to sustain verdict. *Hisle v. Railway Co.*, 91 K. 572.

Refusal of instructions concerning insufficiencies referred to, held not material. *Hisle v. Railway Co.*, 91 K. 572.

Foreman not answerable for negligence of subforeman. *Hisle v. Railway Co.*, 91 K. 572. Company liable to brakeman for injury from negligence of engineer. *Rockhold v. Railway Co.*, 97 K. 715.

Liability for injuries received by workman in car-repair shop controlled by factory act (§§ 285-292, *ante*) and not by this act. *Truman v. Railroad Co.*, 98 K. 761.

§ 462. Contributory negligence of employee not a bar to recovery under this act; damages diminished by jury in proportion to negligence of employee; employee held not to have been guilty of contributory negligence where railroad violating federal or state statute for safety of em-

ployees: That in all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this act to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, That no employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier, its officers, agents, servants or other employees of any federal or state statute enacted for the safety of employees contributed to the injury or death of such employee. [G. S. 1915, § 8481.]

Contributory negligence could not wholly relieve defendant from liability. *Harper v. Railway Co.*, 95 K. 204.

Contributory negligence of brakeman considered only in diminution of damages. *Rockhold v. Railway Co.*, 97 K. 715.

Amount of diminution of damages on account of negligence, considered. *Rockhold v. Railway Co.*, 97 K. 715.

§ 463. Employee held not to have assumed risk of employment where violation of federal or state statute for safety of employees contributed to injury or death. That any action brought against any common carrier, under or by virtue of any of the provisions of this act, to recover damages for injuries to, or the death of any of its employees, such employee[s] shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier, its officers, agents, servants, or other employees of any federal or state statute enacted for the safety of employees contributed to the injury or death of such employee. [G. S. 1915, § 8482.]

§ 464. Contract, rule, regulation, etc., to evade provisions of act, void; carrier may set off sum paid to insurance, relief, benefit or indemnity of injured employee, etc. That any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act, shall to that extent be void: *Provided*, That in any action brought against any common carrier under or by virtue of any of the provisions of this act, such common carrier may set off therein any sum contributed or paid to any insurance, relief, benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action was brought. [G. S. 1915, § 8483.]

§ 465. Right of action under act survives to personal representatives; only one recovery for same injury. That any right of action given by this act to a person suffering injury shall survive to his or her personal representatives, for the benefit of those entitled to recover under this act but in such cases there shall be only one recovery for the same injury. [G. S. 1915, § 8484.]

§ 466. Repeal of acts in conflict herewith. That all acts or parts of acts so far as the same are in conflict herewith are hereby repealed. [G. S. 1915, § 8485.]

ARTICLE 12.—Interlocking or Automatic Signals at Crossings.

§467. Interlocking or automatic signals where railroads cross each other at common grade; approval by board of railroad commissioners; when engines and trains may pass over such crossings without stopping; permission of commission to install system of interlocking or automatic signals.

§ 467. Interlocking or automatic signals where railroads cross each other at common grade; approval by board of railroad commissioners; when engines and trains may pass over such crossings without stopping; permission of commission to install system of interlocking or automatic signals. When in any case two or more railroads crossing each other at a common grade shall, by a system of interlocking or automatic signals, or by any works or fixtures to be erected by them, render it safe for engines and trains to pass over such crossings without stopping, and such interlocking or automatic signals or works or fixtures shall be approved by the board of railroad commissioners, then, in that case, it is hereby made lawful for the engines and trains of such railroad or railroads to pass over such crossing without stopping, any law or the provisions of any law to the contrary notwithstanding; and when two or more railroads cross each other at a common grade, either of such roads may apply to the board of railroad commissioners for the permission to introduce upon both of said railroads some system of interlocking or automatic signals or works or fixtures rendering it safe for engines and trains to pass over such crossings without stopping, and it shall be the duty of said board of railroad commissioners, if the system of works and fixtures which it is proposed to erect by said company are in the opinion of the board sufficient and proper, to grant such permission. [G. S. 1915, § 8413.]

"The board of railroad commissioners," mentioned herein, has passed out of existence, and its powers have been conferred upon the public utilities commission. (G. S. 1915, §§ 8327, 8328.)

ARTICLE 13.—Journal Brass, Penalty for Removal.

<p>§468. Unlawful to remove journal brass from locomotive engine, or tender, passenger, freight, motor or electric car; exception as to employees.</p>	<p>§469. Person violating preceding section guilty of felony; punishment.</p>
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LAWS OF 1917, CH. 169.

AN ACT to prevent the removal of journal brass from any locomotive engine, railroad or interurban cars owned or operated by any person, firm or corporation in the state of Kansas, and providing a penalty for the violation thereof.

§ 468. Unlawful to remove journal brass from locomotive engine, or tender, passenger, freight, motor or electric car; exception as to employees. It is hereby declared unlawful for any person or persons to remove journal brass from a locomotive engine, or tender, passenger, freight, motor or electric car owned or operated by any person, firm or corporation in the state of Kansas, except employees of such firm, person or corporation in the necessary performance of their duty. [Laws 1917, ch. 169, § 1; May 26.]

§ 469. Person violating preceding section guilty of felony; punishment. Any person violating provisions of section 1 of this act shall be guilty of a felony and punished by imprisonment in the penitentiary for a term of not more than five years or less than two years. [Laws 1917, ch. 169, § 2; May 26.]

ARTICLE 14.—Obstructing Operation of Railroad.

§470. Locomotive engineer abandoning locomotive in furtherance of any combination or agreement; punishment.

471. Impeding or obstructing operation or conduct of business of railroad company, or regular running of trains, etc., by any act or by means of intimidation; punishment.

§472. Persons combining or conspiring to obstruct or impede operation and conduct of business of railroad company, or regular running of trains; punishment.

473. Preceding sections not applicable to persons quitting employment of railroad, etc., except as provided in § 470.

LAWS OF 1879, CH. 134.

§ 470. Locomotive engineer abandoning locomotive in furtherance of any combination or agreement; punishment. If any locomotive engineer, in furtherance of any combination or agreement, shall willfully and maliciously abandon his locomotive, upon any railroad, at any other point than the regular schedule destination of such locomotive, he shall be fined not less than twenty dollars nor more than one hundred dollars, and confined not less than twenty days nor more than ninety days in the county jail. [G. S. 1915, § 3755.]

§ 471. Impeding or obstructing operation or conduct of business of railroad company, or regular running of trains, etc., by any act or by means of intimidation; punishment. If any person or persons shall willfully and maliciously by any act or by means of intimidation, impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company, or other corporation, firm or individual in this state, or of the regular running of any locomotive engine, freight or passenger train of any such company, or the labor and business of any such corporation, firm or individual, he or they shall on conviction thereof be punished by a fine of not less than twenty dollars nor more than two hundred dollars, and confined in the county jail not less than twenty days nor more than ninety days. [G. S. 1915, § 3756.]

§ 472. Persons combining or conspiring to obstruct or impede operation and conduct of business of railroad company, or regular running of trains; punishment. If two or more persons shall willfully and maliciously combine or conspire together to obstruct or impede by any act, or by means of intimidation, the regular operation and conduct of the business of any railroad company, or any other corporation, firm or individual in this state, or to obstruct, hinder or impede, except by due process of law, the regular running of any locomotive engine, freight or passenger train on any railroad, or the labor or business of any such corporation, firm or individual, such person shall on conviction thereof be punished by a fine not less than twenty dollars nor more than two hundred dollars, and confined in the county jail not less than twenty days nor more than ninety days. [G. S. 1915, § 3757.]

§ 473. Preceding sections not applicable to persons quitting employment of railroad, etc., except as provided in § 470. This act shall not be construed to apply to cases of persons voluntarily quitting the employment of the railroad company, or such other corporation, firm or individual, whether by concert of action or otherwise, except as is provided in section one of this act. [G. S. 1915, § 3758.]

"Section one of this act," mentioned herein, is § 470, *supra*.

ARTICLE 15.—Passengers on Freight Trains.

§474. Freight trains to which caboose attached obliged to transport passengers; transportation of children; not required to stop at other points to receive or discharge passengers; not necessary to stop caboose at depot; liability

of company; act not applicable to certain trains.

§475. Officer or employee of railroad company violating provisions of preceding section guilty of misdemeanor; punishment.

476. Repeal of Laws of 1907, ch. 274.

LAWS OF 1909, CH. 190.

AN ACT requiring freight trains to which a caboose is attached to transport and carry passengers, and providing penalties for the violation thereof, and repealing chapter 274 of the Laws of 1907.

§ 474. Freight trains to which caboose attached obliged to transport passengers; transportation of children; not required to stop at other points to receive or discharge passengers; not necessary to stop caboose at depot; liability of company; act not applicable to certain trains. That all freight trains to which a caboose is attached shall be obliged to transport, upon the same terms and conditions as passenger trains, all passengers who desire to travel thereon and who are above the age of fifteen years, or who, if under fifteen years, are accompanied by a parent or guardian or other competent person, but no freight train shall be required to stop to receive or discharge any passenger at any other point other than where such freight train may stop; nor shall it be necessary to stop the caboose of such trains at the depot to receive and discharge passengers: *Provided*, That on such trains the railroad companies shall only be liable for their gross negligence: *And provided further*, That this act shall not be construed to apply to freight trains on main lines, the most of which train shall be composed of cars loaded with live stock. [G. S. 1915, § 8536.]

Limitation of liability; carrier liable for gross negligence only. *Jones v. Railway Co.*, 98 K. 133.

Cases construing former act containing similar provisions:

Passengers have absolute right to ride upon freight trains. *Davis v. Railway Co.*, 81 K. 505.

Railroad cannot require different release than prescribed by statute. *Davis v. Railway Co.*, 81 K. 505.

Release required of passenger; mixed train not a freight train. *Schwartz v. Railway Co.*, 83 K. 30.

§ 475. Officer or employee of railroad company violating provisions of preceding section guilty of misdemeanor; punishment. Any officer or employee of such railroad company who shall violate any of the provisions or conditions of section 1 of this act shall upon conviction be deemed guilty of a misdemeanor, and shall be fined in any sum not less than ten nor more than one hundred dollars, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment. [G. S. 1915, § 8537.]

§ 476. Repeal of Laws of 1907, ch. 274. That chapter 274 of the Laws of 1907 be repealed. [G. S. 1915, § 8538.]

ARTICLE 16.—Pilot for Detoured Trains.

§477. Pilot to be furnished for trains detoured over tracks from any other railroad; qualifications of such pilot.

§478. Violation of preceding section deemed a misdemeanor; punishment.

LAWS OF 1913, CH. 254.

AN ACT to require railroad companies to furnish a competent pilot for detoured trains and prescribing penalties for the violation thereof.

§ 477. Pilot to be furnished for trains detoured over tracks from any other railroad; qualifications of such pilot. That any person, firm or corporation owning or operating any railroad in whole or in part in the state of Kansas, whether operated by steam, electricity or other power, must furnish to any train detoured over their tracks from any other railroad, a competent pilot who is familiar with the rules and regulations of such person, firm or corporation and who shall know the physical condition of the road over which said train is detoured. [G. S. 1915, § 8539.]

§ 478. Violation of preceding section deemed a misdemeanor; punishment. Any violation of any provision of section 1 of this act by any person, firm or corporation shall be deemed a misdemeanor and shall be punished by a fine of not less than one (\$100) dollars nor more than five (\$500) dollars for each offense. [G. S. 1915, § 8540.]

ARTICLE 17.—Shelter for Laborers Constructing or Repairing Equipment.

§479. Unlawful to build or repair railroad equipment at division points where shops maintained without providing sheds that may be enclosed over tracks used exclusively for repair work; temporary repairs at other places.

§480. Penalty for failure of any corporation, manager, superintendent, foreman, etc., to comply with provisions of preceding section after 1st day of September, 1907.

LAWS OF 1907, CH. 283, AS AMENDED BY LAWS OF 1913, CH. 256.

AN ACT providing for protection of mechanics, laborers and other persons in construction and repair of railway equipment, and providing punishment for violation thereof.

§ 479. Unlawful to build or repair railroad equipment at division points where shops maintained without providing sheds that may be enclosed over tracks used exclusively for repair work; temporary repairs at other places. It shall be unlawful for any railroad company or corporation or other persons who own, control or operate any line of railroad in the state of Kansas to build or repair railroad equipment at division points where shops are located without providing sheds, so constructed that they may be entirely enclosed, over the tracks exclusively used for such repair work, so that all men permanently employed for such repairs may be protected during storms or other inclement weather or from extreme heat: *Provided*, Nothing in this act shall relate to temporary repairs made at places other than regular shops. [G. S. 1915, § 8545.]

§ 480. Penalty for failure of any corporation, manager, superintendent, foreman, etc., to comply with provisions of preceding section after 1st day of September, 1907. Every corporation, person or persons, manager, superintendent or foreman of any company, corporation, person or persons, who shall fail or refuse to comply with the provisions of this act after the first day of September, 1907, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense. [G. S. 1915, § 8546.]

ARTICLE 18.—Street Railway, etc., Across Tracks of Railroad.*

§481. Crossing of railroad track by cars operated by electricity or overhead wires; height of wires above top of rails of railroad track.

§482. Street-railway company to bring cars to full stop before crossing tracks of railroad company, unless flagman kept at crossing; place of making stop.

LAWS OF 1903, CH. 488.

AN ACT to regulate the construction and maintenance of trolley and electric wires over railway tracks, and the operation of street cars over railway tracks.

§ 481. Crossing of railroad track by cars operated by electricity or overhead wires; height of wires above top of rails of railroad track. All street-railway companies or corporations operating cars by electricity or by overhead wires shall construct and maintain its wires at a height of not less than twenty-one feet above the top of the rail of the railroad track crossed by such street-railway company. [G. S. 1915, § 8698.]

§ 482. Street-railway company to bring cars to full stop before crossing tracks of railroad company, unless flagman kept at crossing; place of making stop. It shall be the duty of every street-railway company or corporation operating a street railway across the tracks of a railroad company to bring its cars to a full stop at least ten and not more than twenty feet before reaching the tracks of the railroad company, unless a flagman is kept at said crossing. [G. S. 1915, § 8699.]

ARTICLE 19.—Switch Lights and Lights Controlling Movements of Trains.

§483. Switch lights to be equipped and maintained on all main line switch stands; exception where automatic block signals answer purpose of switch lights; lights controlling movements of trains to be kept burning from sunset to sunrise; act not to apply in certain cases.

§484. Penalty for violation of any provision of this act.

485. Person manipulating or tampering with switch stand, target, lights, etc., for purpose of misleading train crews guilty of misdemeanor; punishment; felony where death or great bodily injury results; punishment.

LAWS OF 1913, CH. 253.

AN ACT relating to switch lights and light controlling the movements of trains on railroads, and prescribing penalties for the violation thereof.

§ 483. Switch lights to be equipped and maintained on all main line switch stands; exception where automatic block signals answer purpose of switch lights; lights controlling movements of trains to be kept burning from sunset to sunrise; act not to apply in certain cases. It shall be the duty of any person, firm or corporation or receiver, owning or operating any railroad in whole or in part, in the state of Kansas, to equip and maintain in good condition, switch lights on all main line switch stands, except where automatic block signals are used and where such automatic block signals are so located as to answer the purpose of switch lights, and to keep all lights controlling the movements of trains on the main line burning from sunset to sunrise: *Provided*, This act shall not apply to branch lines, where trains are not regularly operated at night, or in cases where the lights have been properly lit, but have failed for causes beyond the control of the company, and it has not had reasonable time to relight them. [G. S. 1915, § 8572.]

* Concerning stringing of wires across railroad tracks, see art. 21 (§§ 489-491, *post*). For other provisions relating to the operation of street railways and interurban lines, see ch. 38 (§§ 504-507, *post*).

§ 484. Penalty for violation of any provision of this act. That any person, firm or corporation or receiver owning or operating any railroad in whole or in part in the state of Kansas, violating any provision of this act shall be deemed guilty of a misdemeanor and fined in the sum of not less than one hundred dollars nor more than five hundred dollars, for each offense. [G. S. 1915, § 8573.]

§ 485. Person manipulating or tampering with switch stand, target, lights, etc., for purpose of misleading train crews guilty of misdemeanor; punishment; felony where death or great bodily injury results; punishment. That any person who shall manipulate or tamper with any switch stand, target, switch light or light controlling the movement of trains, for the purpose of misleading or deceiving engineers, firemen or train crews shall be deemed guilty of a misdemeanor and fined in a sum not less than three hundred dollars and not to exceed one thousand dollars: *Provided*, That in case an unlawful act shall result in causing death or great bodily injury to any person or persons it shall be deemed a felony and shall be punishable by imprisonment at hard labor in the state penitentiary for a period not less than one year nor more than twenty-five years. [G. S. 1915, § 8574.]

ARTICLE 20.—Way Cars or Cabooses, Size and Construction.

§ 486. Corporations and persons to which act shall apply.

487. Specifications for way cars or cabooses which shall be purchased, built or rebuilt for use within the state of Kansas; act not applicable to passenger or combination passenger and baggage cars.

§ 488. Corporation or person violating act deemed guilty of misdemeanor; penalty; recovery of penalty in suit or suits brought by attorney-general; duty of attorney-general to bring suit.

LAWS OF 1917, CH. 261.

AN ACT to promote the safety of travelers and to protect the lives and limbs of railroad employees by regulating the size and construction of cars commonly called way cars or cabooses, and prescribing penalties for the violation thereof.

§ 486. Corporations and persons to which act shall apply. That the provisions of this act shall apply to any corporation or any person or persons while engaged as common carriers in the transportation by railroad of passengers or property within the state, to which the regulative power of this state demands. [Laws 1917, ch. 261, § 1; May 26.]

§ 487. Specifications for way cars or cabooses which shall be purchased, built or rebuilt for use within the state of Kansas; act not applicable to passenger or combination passenger and baggage cars. That hereafter when any corporation or any person or persons engaged as common carriers in the transportation by railroad of passengers or property within this state shall purchase new way cars or cabooses, or shall build new way cars or cabooses, or shall rebuild new way cars or cabooses, now in service within the state of Kansas, the same shall be constructed as follows: Such way cars or cabooses shall be at least twenty-four feet in length, exclusive of end platforms, and equipped with two trucks of not less than four wheels each, and shall be provided with metal center channel sills or steel underframe, or shall be of the constructive strength equal to that of a thirty-ton capacity freight car, and shall be provided with a door in each end thereof, and an outside platform across each end of said car; each platform shall not be less than twenty inches in width, and shall be equipped with proper guard rails and grab irons and steps.

The steps shall be equipped with a suitable rod, board or other guard at each end, and at the back thereof. The caboose shall not be less than eleven feet in height from the rail, with cupola and necessary closets and windows: *Provided*, This and following sections shall not apply where such car so used for a way car or caboose car is a passenger car or a combination passenger and baggage car. [Laws 1917, ch. 261, § 2; May 26.]

§ 488. Corporation or person violating act deemed guilty of misdemeanor; penalty; recovery of penalty in suit or suits brought by attorney-general; duty of attorney-general to bring suit. Any corporation or any person or persons engaged as common carriers in the transportation of passengers or property violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars or more than three hundred dollars for each offense, to be recovered by a suit or suits brought by the attorney-general of the state, and it shall be the duty of the attorney-general to bring such suit upon information being lodged with him upon such violation having occurred. [Laws 1917, ch. 261, § 3; May 26.]

ARTICLE 21.—Wires Crossing Tracks of Railroad.*

§489. Rules and regulations for stringing of wires for transmission of telegraph or telephone messages or for transmission of electricity; interference with wires of other utility; duty of public utilities commission; stringing of wires which cross over or under tracks of railroad company; minimum

height of such wires from the tops of the rails.

§490. Complaint to public utilities commission by interested parties that rules and regulations are being violated, etc.; investigation by commission; order for placing of wires, etc.

491. Sections repealed by this act.

LAWS OF 1917, CH. 252.

AN ACT relating to the stringing of wires along and across highways and at railroad crossings, giving the public utilities commission certain power thereover, and repealing sections 833, 8450 and 8451 of the General Statutes of 1915, and all acts and parts of acts in conflict herewith.

§ 489. Rules and regulations for stringing of wires for transmission of telegraph or telephone messages or for transmission of electricity; interference with wires of other utility; duty of public utilities commission; stringing of wires which cross over or under tracks of railroad company; minimum height of such wires from the tops of the rails. All public utilities owning or operating wires for the transmission of telegraph or telephone messages or for the transmission of electricity upon, along, or across the streets, highways or public places in this state are required to so use, string and maintain such wires as to avoid unreasonable injury or interference from the wires of other utilities and to avoid unreasonable injury to and interference with the wires of other utilities, and the public utilities commission is given the power, and it is hereby made its duty, to prescribe reasonable rules and regulations with respect to the stringing and maintaining of wires in all cases where there is danger or possibility of unreasonable interference with or damage to the wires or service of one utility by those of another utility and with respect to the support, maintenance, repair and reconstruction thereof, which rules shall be furnished to any interested person upon application to the public utilities commission, and the public utilities commission is given the power, and it is hereby made its duty to prescribe reasonable rules and

* For other act concerning construction and maintenance of trolley and electric wires over railway tracks, see art. 18 (§§ 481, 482, *ante*).

regulations with respect to the stringing of wires, electric or otherwise, which cross over or under the tracks of any railroad company and with respect to the support, maintenance, repair and reconstruction thereof, which rules shall be furnished to any interested person upon application; but in no case shall the height of any wires which cross above the tracks of a railway company be less than twenty-five feet from the top of the rails, except trolley and feed wires of electric railroads, which wires shall be not less than twenty-two feet above the tops of the rails. [Laws 1917, ch. 252, § 1; March 13.]

§ 490. Complaint to public utilities commission by interested parties that rules and regulations are being violated, etc.; investigation by commission; order for placing of wires, etc. If complaint shall be made to the public utilities commission by any interested parties that any such wires are not properly placed or not securely supported, or that the rules and regulations of the public utilities commission with respect thereto are being violated, it shall be the duty of the public utilities commission to cause an investigation of such complaint to be made, and if it finds the complaint to be true, to make the necessary orders for the placing of such wires and the support thereof. [Laws 1917, ch. 252, § 2; March 13.]

§ 491. Sections repealed by this act. Sections 833, 8450 and 8451 of the General Statutes of 1915, and all acts and parts of acts in conflict herewith, are hereby repealed. [Laws 1917, ch. 252, § 3; March 13.]

CHAPTER 37.—SMALL DEBTORS' COURTS.

§ 492. Small debtors' court; need for establishment; purpose of court; establishment by county commissioners or mayor and council or city commission of city; resolution or ordinance; appointment of judge of such court.

493. Person who shall be selected as judge; term of office; city or county to furnish stationery, postage, a docket and a telephone.

494. Where judge shall hold court.

495. Jurisdiction of small debtors' court; jurisdiction where court established in county and in city in same county.

496. Showing to be made by plaintiff before judge shall entertain suit; inability to employ a lawyer and invoke jurisdiction of other courts.

497. Commencement of suit; plaintiff must appear in person and state cause orally; docket entry; how defendant may be summoned; hearing; judgment; no costs assessed or charged.

498. Defendant shall pay judgment forthwith or upon terms decreed by judge.

§ 499. Judgment conclusive on plaintiff; defendant may appeal; attorney's fee allowed when case decided against defendant in district court; form of appeal; bond or deposit on appeal; appeal tried in district court without pleadings.

500. When defendant fails to pay judgment or appeal, judge shall certify judgment to clerk of district court; form of certificate; duty of clerk of district court to enter judgment on judgment record; execution on such judgment.

501. Judge of small debtors' court to serve without pay; no attorney at law or other person than plaintiff and defendant allowed to concern himself with the litigation in the small debtors' court; judge may informally consult witnesses, etc., and give judgment.

502. Judge shall not entertain case when he believes plaintiff could without serious financial embarrassment, resort to other courts provided by law.

503. Act supplemental to existing legislation.

LAWS OF 1913, CH. 170.

AN ACT providing for the creation of small debtors' courts, and defining their powers, jurisdiction and procedure.

§ 492. Small debtors' court; need for establishment; purpose of court; establishment by county commissioners or mayor and council or city commission of city; resolution or ordinance; appointment of judge of such

court. That whenever it is made to appear to the satisfaction of any board of county commissioners, or to the mayor and council or city commission of any city, that there is need for the establishment of a small debtors' court in such county or city for the administration of justice concerning the collection of small sums for wages, work or labor, or other small debts, such board of county commissioners may establish a small debtors' court of the county, and the mayor and council or city commission may establish a small debtors' court of such city, by resolution of the board of county commissioners or by ordinance of such city; and such small debtors' court shall be under the jurisdiction of a judge of such small debtors' court. The board of county commissioners shall appoint the judge of the small debtors' court of the county, the mayor of any city, by and with the consent of the city council, or city commission, shall appoint the judge of the small debtors' court of such city. [G. S. 1915, § 3316.]

§ 493. Person who shall be selected as judge; term of office; city or county to furnish stationery, postage, a docket and a telephone. It shall be the duty of the appointing power—the board of county commissioners or the mayor—to select as judge of such small debtors' court some reputable resident citizen of approved integrity who is sympathetically inclined to consider the situation of the poor, friendless, and misfortunate, and he shall hold his office during the pleasure of the appointing power for a term not exceeding four years, and until his successor is appointed and qualified. And it shall be the duty of the appointing power to provide the judge of the debtors' court with stationery, postage, a docket, and a telephone. [G. S. 1915, § 3317.]

§ 494. Where judge shall hold court. The judge of the small debtors' court may hold his court in his own home, or in his own office or place of business, or at some place provided by the power appointing him. [G. S. 1915, § 3318.]

§ 495. Jurisdiction of small debtors' court; jurisdiction where court established in county and in city in same county. The judge of the small debtors' court shall have jurisdiction of all small debts and accounts, not exceeding twenty dollars, but only in cases where the defendant resides in his jurisdiction; and the jurisdiction of the county debtors' court shall be coextensive with the county, but the small debtors' court of the county shall not have jurisdiction in any city where there is a small debtors' court established in such city; and the judge of the small debtors' court of the city shall have jurisdiction coextensive with his city. [G. S. 1915, § 3319.]

§ 496. Showing to be made by plaintiff before judge shall entertain suit; inability to employ a lawyer and invoke jurisdiction of other courts. Before the judge of the small debtors' court shall entertain any suit, the plaintiff must show to the satisfaction of the court that his financial means are so limited that he cannot with justice to himself, or to those dependent upon him, employ a lawyer and invoke the jurisdiction of any of the other courts provided by law. [G. S. 1915, § 3320.]

§ 497. Commencement of suit; plaintiff must appear in person and state cause orally; docket entry; how defendant may be summoned; hearing; judgment; no costs assessed or charged. Before entertaining any suit in such small debtors' court, the plaintiff must appear before the judge of the small debtors' court personally, except in cases of sickness

or physical disability, and state his cause orally, and if the judge of the small debtors' court believes that the plaintiff has a cause of action he shall docket the same by an entry in his docket, and shall summon the defendant orally, or by United States mail, or by telephone, and try the cause considerably and summarily and give judgment thereon. But no costs shall be assessed or charged to either party. [G. S. 1915, § 3321.]

§ 498. Defendant shall pay judgment forthwith or upon terms decreed by judge. If the judgment be against the defendant, it shall be his duty to pay the same forthwith, or upon such terms as the judge of said court shall decree. [G. S. 1915, § 3322.]

§ 499. Judgment conclusive on plaintiff; defendant may appeal; attorney's fee allowed when case decided against defendant in district court; form of appeal; bond or deposit on appeal; appeal tried in district court without pleadings. The judgment of said court shall be conclusive upon the plaintiff. If the defendant is dissatisfied, he may appeal to the district court, and if final judgment is rendered against him in the district court, then he shall pay in addition to the judgment an attorney's fee to the plaintiff in the sum of fifteen dollars. The defendant's appeal may be in the following terms:

"IN THE DISTRICT COURT OF _____ COUNTY, KANSAS.

"Comes now _____, a citizen of _____ county, Kansas, and appeals from a decision of the small debtors' court of the county [or city] of _____ wherein a judgment of _____ dollars was awarded against him on the _____ day of _____, 19—, in favor of _____.
_____ Appellant."

Such appeal shall be accompanied by a bond to secure costs, or a cash deposit as provided by law in other cases in the district court, and such appeal shall be tried in the district court without pleadings. [G. S. 1915, § 3323.]

§ 500. When defendant fails to pay judgment or appeal, judge shall certify judgment to clerk of district court; form of certificate; duty of clerk of district court to enter judgment on judgment record; execution on such judgment. If no appeal is taken by the defendant, and the defendant fails to pay the judgment according to the decree of said small debtors' court, it shall be the duty of the judge of the small debtors' court to certify the judgment to the clerk of the district court in substantially the following form:

"TO THE CLERK OF THE DISTRICT COURT OF _____ COUNTY, KANSAS:

"This is to certify that in a certain action before me, the undersigned, on the _____ day of _____, 19—, wherein _____ was plaintiff and _____ was defendant, and upon which cause I obtained jurisdiction of defendant by summoning him _____ (personally, or by United States mail, or by telephone) and I there and then entered judgment in behalf of plaintiff in the sum of \$_____, which judgment has not been paid.

Witness my hand this _____ day of _____, 19—. _____

Judge of the small debtors' court of
_____ county [or city] Kansas."

The clerk of the district court shall enter such judgment on his judgment record, and execution may issue thereon as in other cases. [G. S. 1915, § 3324.]

§ 501. Judge of small debtors' court to serve without pay; no attorney at law or other person than plaintiff and defendant allowed to concern himself with the litigation in the small debtors' court; judge may informally consult witnesses, etc., and give judgment. The judge of the small debtors' court provided for by this act shall serve without pay, fee or award; and no attorney at law or any other person than the plaintiff and defendant shall concern himself or intermeddle in any manner whatsoever with the litigation in the small debtors' court, nor shall it be necessary to summon witnesses, but the judge of the small debtors' court may informally consult witnesses or otherwise investigate the controversy between the parties, and in every case give judgment according to the very right of the cause. [G. S. 1915, § 3325.]

§ 502. Judge shall not entertain case when he believes plaintiff could, without serious financial embarrassment, resort to other courts provided by law. If the judge of the small debtors' court believes that the plaintiff can, without serious financial embarrassment to himself, or to those dependent upon him, resort to the court of a justice of the peace, or a city court, or any other tribunal provided by law, he shall not entertain the plaintiff's cause in the small debtors' court. [G. S. 1915, § 3326.]

§ 503. Act supplemental to existing legislation. This act shall only be considered as supplemental to existing legislation. [G. S. 1915, § 3327.]

CHAPTER 38.—STREET RAILWAYS AND INTER-URBAN LINES.*

§504. Unlawful to operate street or interurban cars during certain months without inclosed vestibule for motorman or person operating propelling power; vestibule to be heated; seat to be provided for use of motorman; use of such seat under reasonable restrictions.

505. Every such street or interurban car company, etc., to provide cars with

toilet facilities for use of employees and passengers; public utilities commission to strictly enforce provisions of section.

§506. Penalty for failure of officer, owner or manager, etc., to comply with two preceding sections; acts deemed a violation of this act.

507. Repeal of Laws of 1897, ch. 172.

LAWS OF 1909, CH. 195, AS AMENDED BY LAWS OF 1915, CH. 285, AND LAWS OF 1917, CH. 255.

AN ACT for the protection of health and safety of passengers and employees operating street and interurban cars, providing inclosed vestibules, properly heated, and seats for the use of motormen on street and interurban cars, and providing for toilet facilities on the cars or along the right of way, and providing penalties for the violation thereof, and repealing chapter 172, Laws of 1897, being sections 5959, 5960, of the General Statutes of 1901.

§ 504. Unlawful to operate street or interurban cars during certain months without inclosed vestibule for motorman or person operating propelling power; vestibule to be heated; seat to be provided for use of motorman; use of such seat under reasonable restrictions. That it shall be unlawful for any street or interurban car company, or other person, association, or corporation, who own, control or operate any street or interurban car system in whole or in part within the state of Kansas, to

* For acts concerning the construction and maintenance of trolley wires over railway tracks and the crossing of railway tracks by street cars, see ch. 36, art. 18 (§§ 481, 482, ante), and art. 21 (§§ 489-491, ante).

Concerning removal of journal brass from electric cars, see ch. 36, art. 13 (§§ 468, 469, ante.)

run or operate its cars in the regular service of carrying passengers during the months of November, December, January, February and March, without first providing an enclosed vestibule, which shall provide a sufficient shelter for the motorman or other employee used to operate the propelling power on said car. The vestibule provided for the motorman or other employee used to operate the propelling power on said car shall be heated at all times in the same manner and to the same degree of heat which shall not be less than is healthful and comfortable as the interior of said car. And it is further provided that a seat shall be furnished for the use of the motorman on said car or cars and said motorman shall be permitted to use the same, under reasonable restrictions by said company, when the use of the same will not interfere with the proper performance of his duty. [G. S. 1915, § 8702, as amended by Laws 1917, ch. 255, § 1; April 5.]

§ 505. Every such street or interurban car company, etc., to provide cars with toilet facilities for use of employees and passengers; public utilities commission to strictly enforce provisions of section. That every such street or interurban car company, or other person, association or corporation, who own, control or operate any street or interurban car system, in whole or in part within the state of Kansas, shall provide and maintain proper toilet facilities on said interurban cars for the use of its employees and passengers to which such employees and passengers shall have access. It is hereby made the duty of the public utilities commission to strictly enforce the provisions of this section. [G. S. 1915, § 8703.]

§ 506. Penalty for failure of officer, owner or manager, etc., to comply with two preceding sections; acts deemed a violation of this act. Every corporation, officer, owner or manager of any such street or interurban car company who shall fail or refuse to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than twenty-five dollars for each offense, and the operation of a car at any one time during any one day in violation of sections 1 or 2 shall be deemed a violation of this act. [G. S. 1915, § 8704.]

"Sections 1 or 2," mentioned herein, are §§ 504, 505, *supra*.

§ 507. Repeal of Laws of 1897, ch. 172. Chapter 172, Laws of 1897, the same being sections 5959 and 5960 of the General Statutes of 1901, are hereby repealed. [G. S. 1915, § 8705.]

CHAPTER 39.—SUNDAY LABOR.

§508. Penalty for laboring or compelling other persons to labor or perform any work on Sunday; household offices of daily necessity or other works of necessity, etc., excepted.

509. Exception as to persons observing other day of week as Sabbath than Sunday, and ferrymen.

§510. Penalty for exposing to sale any goods, wares or merchandise, or keeping open any grocery, etc., on Sunday.

511. Exception as to sale of drugs or medicines, provisions, or other articles of immediate necessity.

GENERAL STATUTES OF 1868, CH. 31.

§ 508. Penalty for laboring or compelling other persons to labor or perform any work on Sunday; household offices of daily necessity or other works of necessity, etc., excepted. Every person who shall either labor himself or compel his apprentice, servant or any other person under his charge or control to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding twenty-five dollars. [G. S. 1915, § 3661.]

This section held valid. *The State v. Nesbit*, 8 K. A. 104.
Contract made to perform work on week days is good. *Johnson v. Brown*, 13 K. 529.
Contract of sale is good, although made on Sunday. *Birks v. French*, 21 K. 238.
Service of an order of attachment made on Sunday; void. *Morris v. Shew*, 29 K. 661.
Cannot keep open and run theater on Sunday. *Topeka v. Crawford*, 78 K. 583.

§ 509. Exception as to persons observing other day of week as Sabbath than Sunday, and ferrymen. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as the Sabbath, so that he observes such Sabbath, nor to prohibit any ferryman from crossing passengers on any day in the week. [G. S. 1915, § 3662.]

§ 510. Penalty for exposing to sale any goods, wares or merchandise, or keeping open any grocery, etc., on Sunday. Every person who shall expose to sale any goods, wares or merchandise, or shall keep open any ale or porter house, grocery or tippling-shop, or shall sell or retail any fermented or distilled liquor, on the first day of the week, commonly called Sunday, shall on conviction be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars. [G. S. 1915, § 3664.]

§ 511. Exception as to sale of drugs or medicines, provisions, or other articles of immediate necessity. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity. [G. S. 1915, § 3665.]

CHAPTER 40.—UNION LABELS, TRADE-MARKS, ETC.*

§512. Unlawful to counterfeit or imitate any label, trade-mark or form of advertisement adopted by any association or union of workmen for their protection; penalty for violation of section.

513. Penalty for using any counterfeit or imitation of any label, trade-mark or form of advertisement of any such union or association.

514. Such association or union may file label, trade-mark or form of advertisement in office of secretary of state; counterparts or *fac-similes*; certificate of such record; fee; certificate sufficient proof of adoption of such label, etc., in all suits and prosecutions under this act.

§515. Association or union adopting label, etc., may enjoin manufacture, use, display or sale of counterfeits or imitations; damages to be awarded to complainant; defendants required to pay profits derived from such wrongful manufacture, etc.; disposition of counterfeits or imitations in possession of defendant.

516. Penalty for unauthorized use or display of genuine label, trade-mark, etc.; suits commenced and prosecuted by officer or member when association or union not incorporated.

517. Penalty for using name or seal of association or union or officer thereof without authority.

LAWS OF 1891, CH. 213.

AN ACT to protect associations and unions of workmen in their labels, trade-marks, and forms of advertising.

§ 512. Unlawful to counterfeit or imitate any label, trade-mark or form of advertisement adopted by any association or union of workmen for their protection; penalty for violation of section. Whenever any association or union of workmen have adopted or shall hereafter adopt for their protection any label, trade-mark, or form of advertisement, announcing that goods to which [such] label, trade-mark or form of advertisement shall be attached were manufactured by a member or members of such association or union, it shall be unlawful for any person or corporation to counterfeit or imitate such label, trade-mark or form of advertisement. Every person violating this section shall upon conviction be punished by imprisonment in the county jail for not less than three months or more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both fine and imprisonment. [G. S. 1915, § 11654.]

§ 513. Penalty for using any counterfeit or imitation of any label, trade-mark or form of advertisement of any such union or association. Every person who shall use any counterfeit or imitation of any label, trade-mark or form of advertisement of any such union or association, knowing the same to be counterfeit or imitation, shall be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term of not less than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both. [G. S. 1915, § 11655.]

§ 514. Such association or union may file label, trade-mark or form of advertisement in office of secretary of state; counterparts or facsimiles; certificate of such record; fee; certificates sufficient proof of adoption of such label, etc., in all suits and prosecutions under this act. Every such association or union that has heretofore adopted or shall hereafter adopt a label, trade-mark or form of advertisement as aforesaid may file the same for record in the office of the secretary of state by leaving two

* For reference to acts relating to membership in labor organizations, which acts have been declared unconstitutional and void, see § 64, *ante*.

copies, counterparts or *facsimiles* thereof with the secretary of state. Said secretary shall deliver to such association or union so filing the same a duly attested certificate of the record of the same, for which he shall receive a fee of one dollar. Such certificate of record shall, in all suits and prosecutions under this act, be sufficient proof of the adoption of such label, trade-mark, or form of advertisement, and of the right of said union or association to adopt the same. [G. S. 1915, § 11656.]

§ 515. Association or union adopting label, etc., may enjoin manufacture, use, display or sale of counterfeits or imitations; damages to be awarded to complainant; defendants required to pay profits derived from such wrongful manufacture, etc.; disposition of counterfeits or imitations in possession of defendant. Every such association or union adopting a label, trade-mark or form of advertisement as aforesaid may proceed by suit to enjoin the manufacture, use, display or sale of any such counterfeits or imitations; and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use, display, or sale, and shall award the complainant in such suit such damages resulting from such wrongful manufacture, use, display or sale as may by said court be deemed just and reasonable, and shall require the defendants to pay to such association or union the profits derived from such wrongful manufacture, use, display, or sale; and said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. [G. S. 1915, § 11657.]

§ 516. Penalty for unauthorized use or display of genuine label, trade-mark, etc.; suits commenced and prosecuted by officer or member when association or union not incorporated. Every person who shall use or display the genuine label, trade-mark or form of advertisement of any such association or union in any manner not authorized by such association or union shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by a fine of not less than one hundred dollars, or both. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union. [G. S. 1915, § 11658.]

§ 517. Penalty for using name or seal of association or union or officer thereof without authority. Any person or persons who shall in any way use the name or seal of any such association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail of not less than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both. [G. S. 1915, § 11659.]

CHAPTER 41.—UNLAWFUL ASSEMBLIES.

§518. Three or more persons assembling together to do any unlawful act; agreeing to do unlawful act after being lawfully assembled; movement or preparation to do unlawful act; punishment.

519. Persons assembled proceeding to commit offense; duty of judge, justice of the peace, sheriff, constable, marshal, etc., to make proclamation commanding them to disperse and depart; duty of judge, etc., if persons shall not disperse and de-

part; officer to call upon persons to assist in taking persons assembled into custody; penalty for refusal to render immediate assistance.

§520. Incorporated cities and towns liable for damages from action of mobs; loss of property or injury to life or limb.

521. What may be given in evidence in mitigation of damages in actions under preceding section.

PART OF GENERAL STATUTES OF 1868, CH. 31.

§ 518. Three or more persons assembling together to do any unlawful act; agreeing to do unlawful act after being lawfully assembled; movement or preparation to do unlawful act; punishment. If three or more persons shall assemble together with intent to do any unlawful act with force and violence against the person or property of another, or to do any unlawful act against the peace, or being lawfully assembled, shall agree with each other to do any unlawful act aforesaid, shall make any movement or preparation therefor, the person so offending on conviction thereof shall be fined in the sum not exceeding two hundred dollars. [G. S. 1915, § 3674.]

Charivari party used unlawful violence within meaning of statute. *Cherryvale v. Hawman*, 80 K. 170.

Prisoners in city jail effect unlawful assembly. *Blakeman v. City of Wichita*, 93 K. 444.

§ 519. Persons assembled proceeding to commit offense; duty of judge, justice of the peace, sheriff, constable, marshal, etc., to make proclamation commanding them to disperse and depart; duty of judge, etc., if persons shall not disperse and depart; officer to call upon persons to assist in taking persons assembled into custody; penalty for refusal to render immediate assistance. When three or more persons shall be assembled as aforesaid and proceed to commit any of the offenses in the preceding section mentioned, it shall be the duty of any judge, justice of the peace, sheriff, constable, marshal, or other peace officer, immediately upon actual view, or as soon as may be on information, to make proclamation in the hearing of such offenders, commanding them in the name of the state of Kansas to disperse and to depart to their several homes or lawful employments; and if upon such proclamation such persons shall not disperse and depart as aforesaid, it shall be the duty of such judge, justice of the peace, sheriff, constable, marshal or other peace officer to call upon persons near, and if necessary throughout the county, to aid and assist in dispersing and taking into custody all persons assembled as aforesaid; and all persons called on as aforesaid, and refusing to render immediate assistance, shall each upon conviction thereof be fined in any sum not exceeding one hundred dollars. [G. S. 1915, § 3675.]

GENERAL STATUTES OF 1868, CH. 32.

AN ACT providing for the recovery of damages against cities and towns.

§ 520. Incorporated cities and towns liable for damages from action of mobs; loss of property or injury to life or limb. All incorporated cities

and towns shall be liable for all damages that may accrue in consequence of the action of mobs within their corporate limits, whether such damages shall be loss of property or injury to life or limb. [G. S. 1915, § 3822.]

City is liable for damages caused by charivari mob. *Cherryvale v. Hawman*, 80 K. 170. Mob formed by prisoners in city jail; liability of city. *Blakeman v. City of Wichita*, 93 K. 444.

Persons summoned by officer to assist in making arrest may constitute a mob; motive of persons assembled a question of fact. *Harvey v. City of Bonner Springs*, 102 K. 9.

§ 521. What may be given in evidence in mitigation of damages in actions under preceding section. In all actions under the preceding section, the character, use or manner of occupancy of the property lost or destroyed, and the reputation and conduct of the person injured, may be given in evidence in mitigation of damages. [G. S. 1915, § 3823.]

Exemplary damages allowed only where actual damages proved. *Adams v. City of Salina*, 58 K. 246.

Inability to prevent injury no defense; liable for bodily injuries. *Iola v. Birnbaum*, 71 K. 600.

Influence of keeper's conduct upon mitigation of damages to saloon. *Stevens v. Anthony*, 82 K. 179.

CHAPTER 42.—VAGRANCY.

§522. Power of cities of first class to punish persons carrying firearms, etc., cause to be arrested and imprisoned, fined or put to work all vagrants, tramps, confidence men, etc., and other persons without visible means of support.

523. Power of cities of second class to prohibit carrying of firearms, etc., cause to be arrested and imprisoned, fined or set at work all vagrants or persons without visible means of support.

524. Power of cities of third class to prohibit carrying of firearms, etc., cause to be arrested and imprisoned, fined or set at work all vagrants or persons without visible means of support.

525. Person found loitering, etc., without visible means of support, or keeper of house of ill-fame, or married man refusing to provide

for support of family deemed vagrant; punishment.

§526. Board of county commissioners to make regulations for working of vagrants; constant employment.

527. Person engaged in unlawful calling, loitering without visible means of support in any community, refusing to work when work at fair wages is to be procured, or threatening violence or personal injury to fellow workmen or to employers of labor deemed a vagrant; punishment.

528. Duty of sheriffs, deputies, police officers, etc., to promptly arrest persons described in preceding section and take them before some justice of the peace, city court, or police court; such courts authorized to summarily try such persons and pass sentence upon them.

PART OF LAWS OF 1903, CH. 122.

§ 522. Power of cities of first class to punish persons carrying firearms, etc., cause to be arrested and imprisoned, fined or put to work all vagrants, tramps, confidence men, etc., and other persons without visible means of support. To punish persons for carrying firearms, or other dangerous and deadly weapons, concealed or otherwise, and cause to be arrested and imprisoned, fined or put to work all vagrants, tramps, confidence men, persons found loitering around saloons, gambling houses, houses of prostitution, and all other persons found in the city without visible means of support or some legitimate business. [G. S. 1915, § 1096.]

The foregoing section is a part of the act relating to cities of the first class, and a part of the article relating to the powers of the mayor and council of such cities.

PART OF LAWS OF 1872, CH. 100.

§ 523. Power of cities of second class to prohibit carrying of firearms, etc., cause to be arrested and imprisoned, fined or set at work all vagrants or persons without visible means of support. The council may prohibit and punish the carrying of firearms or other deadly weapons, concealed or otherwise, and may arrest and imprison, fine or set at work all vagrants and persons found in said city without visible means of support, or some legitimate business. [G. S. 1915, § 1742.]

Judicial construction of right to bear arms. *Salina v. Blaksley*, 72 K. 230.

The foregoing section is a part of the act relating to cities of the second class, and a part of the article relating to the powers of the mayor and council of such cities.

PART OF LAWS OF 1871, CH. 60.

§ 524. Power of cities of third class to prohibit carrying of firearms, etc., cause to be arrested and imprisoned, fined or set at work all vagrants or persons without visible means of support. The council may prohibit and punish the carrying of firearms or other deadly weapons, concealed or otherwise, and may arrest and imprison, fine, or set at work, all vagrants and persons found in said city without visible means of support, or some legitimate business. [G. S. 1915, § 1939.]

The foregoing section is a part of the act relating to cities of the third class, and a part of the article relating to the powers of the mayor and council of such cities.

PART OF GENERAL STATUTES OF 1868, CH. 31.

§ 525. Person found loitering, etc., without visible means of support, or keeper of house of ill-fame, or married man refusing to provide for support of family deemed vagrant; punishment. Any person who may be found loitering around houses of ill-fame, gambling-houses, or places where liquors are sold or drank, without any visible means of support, or shall be the keeper or inmate of any house of ill-fame or gambling-house, or engaged in any unlawful calling whatever, or any able-bodied married man who shall neglect or refuse to provide for the support of his family, shall be deemed a vagrant, and upon conviction thereof may be fined in any sum not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year. [G. S. 1915, § 3774.]

§ 526. Board of county commissioners to make regulations for working of vagrants; constant employment. The board of county commissioners shall make such regulations for the working of vagrants as will keep them as nearly as possible in constant employment. [G. S. 1915, § 3775.]

LAWS OF 1917, CH. 167.

AN ACT defining vagrancy, and providing punishment therefor.

§ 527. Person engaged in unlawful calling, loitering without visible means of support in any community, refusing to work when work at fair wages is to be procured, or threatening violence or personal injury to fellow workmen or to employers of labor deemed a vagrant; punishment. Any person engaged in any unlawful calling whatever, or who shall be found loitering without visible means of support in any community, or who, being without visible means of support shall refuse to work when work at fair wages is to be procured in the community, or who shall threaten violence or personal injury to fellow workmen or to employers of labor, shall be deemed a vagrant, and upon conviction thereof shall be

fixed in any sum not less than one hundred nor more than five hundred dollars, and shall be imprisoned in the county jail for a period not less than thirty days nor more than six months. [Laws 1917, ch. 167, § 1; April 3.]

§ 528. Duty of sheriffs, deputies, police officers, etc., to promptly arrest persons described in preceding section and take them before some justice of the peace, city court, or police court; such courts authorized to summarily try such persons and pass sentence upon them. It shall be the duty of all sheriffs and their deputies, chiefs of police and police officers, and other commissioned peace officers to promptly arrest all persons described in section 1 of this act as vagrants who may be found in their community and to take them before some justice of the peace, city court or police court in cities of the first, second and third class, which courts are hereby authorized to summarily try such persons upon such charge, and if found guilty to pass sentence upon them as is provided in section 1 of this act. [Laws 1917, ch. 169, § 2; April 3.]

"Section 1 of this act," mentioned herein, is § 527, *supra*.

CHAPTER 43.—WAGES, PAYMENT, COLLECTION, ETC.

Article 1. Claims for Wages, Exemption. § 529.

2. Drawing Check or Draft When no Funds Deposited.

§§ 530-535.

3. Exemption of Wages Earned in Another State. § 536.

4. Garnishment, Amount of Personal Earnings Taken.

§§ 537, 538.

5. Insolvency, Wages Preferred. § 539.

6. Resignation or Discharge of Employee, Payment of Wages.

§§ 540, 541.

7. Semimonthly Payment by Corporations. §§ 542-544.

8. Time Checks, Due Bills, Script, Orders, etc. §§ 545-548.

9. Time for Bringing Actions for Wages. § 549.

10. Weekly Payment in Lawful Money by Certain Corporations. §§ 550-556.

ARTICLE 1.—Claims for Wages, Exemption.

§ 529. Personal property not exempt from attachment or execution for wages of clerk, mechanic, laborer or servant.

PART OF GENERAL STATUTES OF 1868, CH. 38.

§ 529. Personal property not exempt from attachment or execution for wages of clerk, mechanic, laborer or servant. None of the personal property mentioned in this act shall be exempt from attachment or execution for the wages of any clerk, mechanic, laborer or servant. [G. S. 1915, § 4703.]

"The personal property mentioned in this act," relates to the personal property mentioned in the general act providing for exemptions to the head of a family and to persons not the head of a family. (G. S. 1915, §§ 4700, 4701.)

This section held constitutional and valid. *McBride v. Reitz*, 19 K. 123.

No personal property is exempt from wages of laborer. *Seymour, Sabin & Co. v. Cooper*, 26 K. 539.

State laws have no extraterritorial force. *B. & M. R. Rld. Co. v. Thompson*, 31 K. 180.

ARTICLE 2.—Drawing Check or Draft When no Funds Deposited.

§530. Unlawful to draw, make, utter, issue or deliver any check or draft knowing there are no funds or credits with which to pay such check or draft.

531. Punishment for violation of preceding section when check or draft drawn for less than twenty dollars; punishment when check or draft drawn for twenty dollars or more.

§532. Application before trial to have action abated; showing to be made to court or judge; discharge of defendant upon paying into court the amount of such check and the costs of said case.

533. Meaning of "credits" as used in this act.

534. Act not apply to where check or draft actually honored by bank.

535. Act not construed as repealing sections of acts specified.

LAWS OF 1915, CH. 92, AS AMENDED BY LAWS OF 1917, CH. 170.

AN ACT prohibiting any person, corporation or partnership from drawing, making, uttering, issuing or delivering a check or draft on any bank or depository in which there are no funds deposited with which to pay same when presented, and providing penalties for violation thereof.

§ 530. Unlawful to draw, make, utter, issue or deliver any check or draft knowing there are no funds or credits with which to pay such check or draft. It shall be unlawful for any person, corporation, or partnership, to draw, make, utter, issue or deliver to another any check or draft on any bank or depository for the payment of money or its equivalent, knowing, at the time of the making, drawing, uttering or delivery of any such check or draft as aforesaid that he has no funds on deposit in or credits with such bank or depository with which to pay such check or draft upon presentation. [G. S. 1915, § 3471.]

§ 531. Punishment for violation of preceding section when check or draft drawn for less than twenty dollars; punishment when check or draft drawn for twenty dollars or more. That any person, corporation or partnership, willfully violating any of the provisions of section 1 of this act, shall be deemed guilty of a misdemeanor if such check or draft is drawn for less than twenty dollars and upon conviction shall be punished by a fine of not less than twenty-five dollars and not more than one hundred dollars or imprisonment in the county jail for a period of not less than ten days and not more than six months, or by both such fine and imprisonment; if said check or draft shall be drawn for an amount of twenty dollars or more, such person shall be deemed guilty of a felony and upon conviction shall be punished by a fine of not less than one hundred dollars and not more than five thousand dollars, or by imprisonment in the state penitentiary for a period of not less than one year nor more than five years, or by both fine and imprisonment. [G. S. 1915, § 3472, as amended by Laws 1917, ch. 170, § 1; May 26.]

§ 532. Application before trial to have action abated; showing to be made to court or judge; discharge of defendant upon paying into court the amount of such check and the costs of said case. That in any case where a prosecution is begun under this act, the defendant shall have a right, upon application made for that purpose before trial, to have said action abated by showing to the court or judge that he has had an account in said bank upon which said check or draft was drawn, thirty days next prior to the time said check or draft was delivered and that said check or draft was drawn upon said bank without intent to defraud the party receiving the same, and if the court shall so find, said action shall be abated and the defendant shall be discharged upon paying into court the amount of such check and the costs in said case. [G. S. 1915, § 3473.]

§ 533. Meaning of "credits" as used in this act. ("Credits" defined.) The word "credits" as used herein shall be construed to be an arrange-

ment or understanding with the bank or depository for the payment of such check or draft. [G. S. 1915, § 3474.]

§ 534. Act not to apply where check or draft actually honored by bank. It is further provided that nothing in this act shall apply in cases where checks or drafts were actually honored by bank or banks on which they were drawn. [G. S. 1915, § 3475.]

§ 535. Act not construed as repealing sections of acts specified. That nothing in this act shall be construed as repealing sections 2584, 2585 and 2586 of the General Statutes of 1909, or any existing law or laws now in force. [G. S. 1915, § 3476.]

"Sections 2584, 2585 and 2586 of the General Statutes of 1909," mentioned herein, are printed as §§ 3467-3469 of the General Statutes of 1915, and relate to the obtaining of money or property by false tokens or pretenses.

ARTICLE 3.—Exemption of Wages Earned in Another State.

§ 536. Wages earned in another state, when exempt; court to dismiss action at cost of plaintiff when writ of attachment or garnishment not personally served on defendant.

LAWS OF 1905, CH. 523.

AN ACT in relation to wages earned out of the state of Kansas.

§ 536. Wages earned in another state, when exempt; court to dismiss action at cost of plaintiff when writ of attachment or garnishment not personally served on defendant. That wages earned out of this state and payable out of this state shall be exempt from attachment or garnishment in all cases where the cause of action rose [arose] out of this state, unless the defendant in the attachment or garnishment suit is personally served with process; and if the writ of attachment or garnishment is not personally served on the defendant, the court issuing the writ of attachment or garnishment shall not entertain jurisdiction of the cause, but shall dismiss the suit at the cost of the plaintiff. [G. S. 1915, § 4705.]

ARTICLE 4.—Garnishment, Amount of Personal Earnings Taken.

§ 537. Judge may order property of judgment debtor in his hands or due to him applied toward satisfaction of judgment; enforcement of such order; earnings of debtor for personal services, when exempt; exception.

§ 538. Ten per cent and court costs not to exceed four dollars of earnings of debtor may be taken and applied on debts; affidavit; one deduction in any one calendar month; notice of filing affidavit; counter affidavit; hearing; sickness of debtor or member of family, when act not invoked; accounts sold, assigned, delivered to collector, collection agency, etc., such person or firm not entitled to benefits of act; act not to hold more than ten per cent and four dollars for court costs before judgment; payment of balance to debtor; taking of earnings after judgment; act not to exempt earnings of debtor not head of family.

PART OF LAWS OF 1909, CH. 182, AS AMENDED BY LAWS OF 1913, CH. 232.

AN ACT relating to the personal earnings of debtors; amending sections 6126 and 6127 of the General Statutes of Kansas of 1909, and repealing said original sections, and also repealing section 6526 of the General Statutes of Kansas of 1909.

§ 537. Judge may order property of judgment debtor in his hands or due to him applied toward satisfaction of judgment; enforcement of such order; earnings of debtor for personal services, when exempt; exception. The judge may order any property of the judgment debtor not exempt by law, in the hands either of himself or any other person or corporation, or due to the judgment debtor, to be applied toward the satisfaction of the judgment, and may enforce the same by proceedings for contempt, in case of refusal or disobedience; but the earnings of the debtor for his personal services at any time within three months next preceding the order cannot be so applied when it is made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor, except as provided in section 2 of this act, amendatory of section 6127 of the General Statutes of the state of Kansas of 1909. [G. S. 1915, § 7435.]

"Section 2 of this act, amendatory of section 6127 of the General Statutes of the state of Kansas of 1909," mentioned herein, is the following section (§ 538).

Cases construing former act containing similar provisions:

Order to pay not final determination of liability of garnishee. Board of Education v. Scoville, 13 K. 17.

Section construed. Seymour, Sabin & Co. v. Cooper, 26 K. 539.

Foreign corporation may be garnished in this state. B. & M. R. Rld. Co. v. Thompson, 31 K. 180.

Judgment debtor may be committed for contempt. The State, *ex rel.*, v. Burrows, 33 K. 10; *In re Burrows, Petitioner*, 33 K. 675.

Garnishment by nonresident, when funds exempt in this state. Mo. Pac. Rly. Co. v. Maltby & Co., 34 K. 125.

Personal earnings, when exempt; debtor must be part of family. Zimmerman v. Franke, 34 K. 650.

Personal earnings, when exempt; no distinction between residents and nonresidents. K. C. St. J. & C. B. Rld. Co. v. Gough & Linley, 35 K. 1.

Contempt for refusal to pay not avoided by showing made. *In re Lewis*, 67 K. 340.

Order not conclusive on persons not parties to action. Honce v. Schram, 73 K. 368.

Concerning residence of debtor, etc., see the following section.

§ 538. Ten per cent and court costs not to exceed four dollars of earnings of debtor may be taken and applied on debts; affidavit; one deduction in any one calendar month; notice of filing affidavit; counter affidavit; hearing; sickness of debtor or member of family, when act not invoked; accounts sold, assigned, delivered to collector, collection agency, etc., such person or firm not entitled to benefits of act; act not to hold more than ten per cent and four dollars for court costs before judgment; payment of balance to debtor; taking of earnings after judgment; act not to exempt earnings of debtor not head of a family. Ten (10%) per cent, and court cost not to exceed four dollars (\$4), and no more of the earnings of a debtor who is a resident of this state, for his personal services at any time within three months next preceding the issuing of any attachment, or garnishment process, may be taken and applied to the payment of his debts, when it is made to appear by the debtor's affidavit or otherwise, that the remainder of such earnings above the said ten (10%) per cent and court costs not to exceed four dollars (\$4), are necessary for the maintenance of a family supported wholly or partly by his labor; and such earnings of any such debtor, earned during any one calendar month shall be subject to only one deduction of the amount herein made subject to attachment, or garnishment process, and one application of such deduction in one action shall be a bar to any deduction in any other action for such calendar month, regardless of where or by whom the action may be brought: *Provided*, That at the time of filing such affidavit the debtor shall notify the plaintiff or his agent or attorneys thereof in writing by serving a copy of said affidavit on said plaintiff or his agent or attorneys:

And provided, That nothing herein contained shall prevent the adverse party from controverting the matters sought to be proven by such affidavit by a counter affidavit, or, if sought to be proven in any other manner, the same may be controverted by any competent evidence: *And provided further*, That such counter affidavit shall be filed within forty-eight hours after the notice of the filing of the said debtor's affidavit, and final hearing shall be had thereon at a time to be fixed by the court or judge within ten days from the notice of the filing of the debtor's affidavit, if pending in the justice's court, and if pending in the district court, it shall be tried at the first term held after filing such affidavit: *And provided further*, That if any debtor is prevented, on account of being sick, or on account of the sickness of any member of his family, from working at his regular trade, profession or calling for any period greater than two weeks and this fact is shown by the testimony of a regular admitted and practicing physician, the provisions of this act shall not be invoked against any such debtor until after the expiration of two months after his recovery from such sickness: *And provided still further*, That if any person, firm or corporation sells or assigns his account to any person or collecting agency, or sends or delivers the same to any collector or collecting agency for collection, then such person, firm or corporation or the assignees of either shall not have nor be entitled to the benefits of this act: *And provided still further*, That nothing herein shall be construed to hold or subject to execution, attachment or garnishment, any amount of such debtor's earnings above the amount of ten per cent and court costs of (\$4) herein held to pay the debt of any such debtor, until after judgment may be obtained against such debtor, and any employer of any such debtor is authorized to pay to any such debtor at any time all of his earnings except the amount of ten per cent and court costs of (\$4) herein made subject to pay his debts, and the taking of any of the earnings of any debtor, who is the head of a family, after judgment, shall be governed by the laws now on the statute books governing attachment and garnishment proceedings, but nothing herein shall be construed as exempting any of the earnings of any debtor who is not the head of a family dependent wholly or in part upon him for support. [G. S. 1915, § 7436.]

Salary due from a county to a deputy sheriff cannot be taken by garnishment. *Haddock v. McDonald*, 98 K. 628.

Cases construing *Old Code*, § 490a:

Waiver of exemption laws in lease not effective hereunder. *Burke v. Finley*, 50 K. 424.

Order determining exemption is final order, before or after judgment. *Cunningham v. Railway Co.*, 60 K. 268.

See annotations under preceding section.

Concerning wages earned in another state, see § 536, *ante*.

Cases construing § 157 of *Justices' Civil Code*, which section was repealed by L. 1913, ch. 232, § 3:

Earnings necessary for support of family exempt; meaning of "family." *Seymour Sabin & Co. v. Cooper*, 26 K. 539; *Harding v. Hendrix*, 26 K. 583; *Muzzy & Tuttle v. Lantry & Burr*, 30 K. 49.

Debts created after service of garnishee process not subject thereto. *Muzzy & Tuttle v. Lantry & Burr*, 30 K. 49.

Earnings exempt in another state, held exempt in this state. *Mo. Pac. Rly. Co. v. Maltby & Co.*, 34 K. 125.

Earnings exempt whether process be attachment, garnishment or execution. *Zimmerman v. Franke*, 34 K. 650.

Injunction to prevent creditor from proceeding in another state. *Zimmerman v. Franke*, 34 K. 650.

Meaning of family; unmarried son held not part of family. *Zimmerman v. Franke*, 34 K. 650.

Exemption of personal earnings; no distinction between residents and nonresidents. *K. C. St. J. & C. B. Rld. Co. v. Gough & Linley*, 35 K. 1.

Damages may be obtained for wrongful appropriation of wages. *Stark v. Bare*, 39 K. 100.

ARTICLE 5.—Insolvency, Wages Preferred.

§539. Wages of employees of corporations, partnerships and individuals preferred in case of insolvency.

LAWS OF 1901, CH. 229.

AN ACT to prefer the wages of employees of corporations, partnerships and individuals in case of insolvency.

§ 539. Wages of employees of corporations, partnerships and individuals preferred in case of insolvency. That whenever a receiver shall be appointed of the estate of any corporation, copartnership, or individual, under the laws of this state, or whenever any corporation, copartnership or individual shall make a general assignment for the benefit of the creditors of such corporation, copartnership, or individual, the wages due to all laborers or employees other than officers of such corporation, accruing within the six months immediately preceding such appointment of a receiver or such assignment, shall be preferred to every other debt or claim against such corporation, copartnership, or individual, and shall be paid by the receiver or assignee of such corporation, copartnership or individual from the moneys thereof which shall first come into the hands of such receiver or assignee. [G. S. 1915, § 5885.]

Preference not defeated by applying first proceeds to other purposes. *Geppelt v. Stone Co.*, 90 K. 539.

ARTICLE 6.—Resignation or Discharge of Employee, Payment of Wages.

§540. Unlawful for firm or corporation to refuse or neglect to pay wages of persons leaving service, within ten days from the termination of such services; place of payment; notice in writing to foreman, etc.

§541. Penalty for failure to pay wages as provided in preceding section: wages continue as though such party still in the service; wages not to continue more than sixty days unless action brought.

LAWS OF 1911, CH. 219.

AN ACT providing when wages shall be paid to any person leaving the service, either by resignation or discharge, of any firm or corporation; and providing penalty for violation of the provision of this act.

§ 540. Unlawful for firm or corporation to refuse or neglect to pay wages of persons leaving service, within ten days from the termination of such services; place of payment; notice in writing to foreman, etc. It shall be unlawful for any firm or corporation employing labor within this state, to refuse or neglect to pay to any person leaving its service either by resignation or discharge any money due as wages within ten days from the termination of such services, and such payment must be made either at the place of discharge or at any office of such company or corporation within the state as may be designated by the party employed, he giving notice in writing, to the foreman or party in charge of such work. [G. S. 1915, § 5880.]

§ 541. Penalty for failure to pay wages as provided in preceding section; wages continue as though such party still in the service; wages not to continue more than 60 days unless action brought. Any corporation or firm failing or refusing to pay wages due to any person leaving their employment, as provided in section 1 of this act, shall, as a penalty for violation thereof for such nonpayment, the wages of such servant or employee shall continue from the date of the discharge or resignation of said employee, at the same rate as if he was still in the service, until full and complete settlement is made: *Provided*, Such wages shall not continue for

more than 60 days unless action for the recovery of the same shall have been commenced in any court of competent jurisdiction within that time. [G. S. 1915, § 5881.]

"Section 1 of this act," mentioned herein, is § 540, *supra*.
Section 5882 of the General Statutes of 1915 provides, "that all laws and parts of laws in conflict herewith are hereby repealed."

ARTICLE 7.—Semimonthly Payment by Corporation.*

§542. Corporations shall pay wages of mechanics, laborers, etc., as often as twice each month; not apply to state or to municipal corporation.

§543. Penalty for violation of preceding section.

544. Repeal of acts in conflict herewith.

LAWS OF 1915, CH. 165.

AN ACT concerning corporations and requiring same to pay the wages of employees as often as semimonthly, and providing penalties for the violation thereof, and repealing all acts or parts of acts in so far only as in conflict with this act.

§ 542. Corporation shall pay wages of mechanics, laborers, etc., as often as twice each month; not apply to state or to municipal corporation. All corporations doing business in this state, which shall employ any mechanics, laborers, or other servants, shall pay the wages of such employees as often as semimonthly: *Provided*, This act shall not apply to the state or any municipal corporation. [G. S. 1915, § 2164.]

§ 543. Penalty for violation of preceding section. Any corporation violating section 1 of this act shall be deemed guilty of misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars nor more than five hundred dollars for each offense. [G. S. 1915, § 2165.]

"Section 1 of this act," mentioned herein, is § 542, *supra*.

§ 544. Repeal of acts in conflict herewith. All acts or parts of acts in so far only as in conflict with this act are hereby repealed. [G. S. 1915, § 2166.]

ARTICLE 8.—Time Checks, Due Bills, Script, Orders, Etc.

§545. Time-check, due-bill, order for merchandise, etc., issued for wages to be dated when issued and payable in money after fifteen days; act not repeal other acts.

546. Maker of such time-check, due-bill, etc., liable for double the amount with attorney fee for failure to redeem same in money.

§547. Due-bill, script, order for merchandise, etc., issued in exchange for all or any part of a time check, due-bill, script, order for merchandise, etc., issued in payment of wages shall be payable in money; exception when proper due date plainly stated.

548. Penalty for violation of preceding section by any person, firm or corporation.

LAWS OF 1899, CH. 152.

AN ACT to compel the payment in lawful money of the United States of all time-checks, due-bills, orders, or orders for merchandise issued in payment of wages for labor.

§ 545. Time-check, due-bill, order for merchandise, etc., issued for wages to be dated when issued and payable in money after fifteen days; act not to repeal other acts. That any time-check, due-bill, order or orders for merchandise, issued by any person, firm or corporation to any person in their or its employ in payment of wages for labor, shall be dated at the time of its issuance, and after fifteen days from the date of issuance, shall, at the option of the holder thereof, be payable by the maker in lawful money of the United States: *Provided*, That nothing in this act

* Concerning payment of wages to minors, see §§ 84, 85, *ante*.

shall be construed to repeal any law now on the statute book. [G. S. 1915, § 5883.]

§ 546. Maker of such time-check, due-bill, etc., liable for double the amount with attorney fee for failure to redeem same in money. In the event the maker of any time-check, due-bill or orders for merchandise issued in payment of wages for labor shall refuse to redeem and pay the same in lawful money of the United States, and the holder thereof brings an action to recover thereon, said maker shall be liable for double the amount of said time-check, due-bill or order for merchandise to the holder thereof, together with a reasonable attorney fee, to be recovered in such action. [G. S. 1915, § 5884.]

LAWS OF 1917, CH. 229.

AN ACT to compel the payment in lawful money of the United States of all time checks, due bills, script, orders, or orders for merchandise issued in payment of wages for labor.

§ 547. Due bill, script, order for merchandise, etc., issued in exchange for all or any part of a time check, due bill, script, order for merchandise, etc., issued in payment of wages shall be payable in money; exception when proper due date plainly stated. Any due bill, script, order or orders for merchandise issued by any person, firm or corporation to any person in exchange for all or any part of a time check, due bill, script, order or orders for merchandise issued by any person, firm, or corporation to any one in their or its employ in payment of wages for labor shall, at the option of the holder, be payable on demand in lawful money of the United States unless the due date shall be plainly and specifically stated thereon, which said due date shall not be more than fifteen days after date. [Laws 1917, ch. 229, § 1; May 26.]

§ 548. Penalty for violation of preceding section by any person, firm or corporation. Any person, firm, or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum of not less than \$500 nor more than \$1000 for each offense. [Laws 1917, ch. 229, § 2; May 26.]

ARTICLE 9.—Time for Bringing Actions for Wages.

§549. Time for bringing action upon an agreement, contract or promise in writing; contract, not in writing, express or implied, etc.

PART OF LAWS OF 1909, CH. 182.

§ 549. Time for bringing action upon an agreement, contract or promise in writing; contract, not in writing, express or implied, etc. Civil actions, other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

First.—Within five years: An action upon any agreement, contract or promise in writing.

Second.—Within three years: An action upon contract, not in writing, express or implied; an action upon a liability created by statute, other than a forfeiture or penalty.

[G. S. 1915, § 6907.]

First clause:

Five-year limitation applicable to action on promissory note. *Robertson v. Tarry*, 83 K. 716.

Second clause:

Statute of limitation not tolled by action of one partner. *Brooks v. Campbell*, 97 K. 208.

Cases construing former act containing similar provisions:

Limitation period does not run while suit is pending. *Kothman v. Skaggs*, 29 K. 5.

Limitation period ineffective against state unless expressly provided in statute. *The State v. School district*, 34 K. 237.

First clause:

Bar of statute may be removed by unqualified written admission. *Dezell v. Thayer*, 2 K. A. 587.

Where demand is necessary, statute runs from date of demand. *Stevens County v. Tandler*, 9 K. A. 761.

The word "contract" herein does not include a judgment. *Burnes v. Simpson*, 9 K. 658.

Statute may be waived by express agreement in writing. *Mead v. Insurance Co.*, 68 K. 432.

Second clause:

Right of action on implied contract barred after three years. *Comm'rs of Clay Co. v. Streeter*, 2 K. A. 498; *Seibert v. Baxter*, 36 K. 189.

Clause applicable to action against stockholder of insolvent corporation. *Fox v. Bank*, 9 K. A. 18.

Action to enforce lien for fine barred after three years. *The State v. Pfefferle*, 33 K. 718.

Clause applicable to action upon liability created by statute. *Durein v. Pontious*, 34 K. 353.

ARTICLE 10.—Weekly Payment in Lawful Money by Certain Corporations.

§550. Private corporations to pay wages in lawful money of the United States, and not later than Friday of the following week; certain corporations excepted.

551. Penalty for failure to pay employees as provided in preceding section; penalty due to employees.

552. Wages become due and payable as provided in preceding section when employee discharged.

553. Time within which employee may recover such penalties.

§554. Contract or agreement violating or evading provisions of this act unlawful and void.

555. Wages of employees of contractor doing work for such corporation payable as herein provided; liability of corporation to employees of such contractor.

556. Attorney fee taxed and collected as part of judgment when necessary for employee to bring suit for wages due as provided in this act.

LAWS OF 1893, CH. 187.

AN ACT providing for the weekly payment of wages in lawful money of the United States by certain corporations, and providing a penalty for the violation thereof.

§ 550. Private corporations to pay wages in lawful money of the United States, and not later than Friday of the following week; certain corporations excepted. All private corporations doing business within this state, except all steam surface railways and except corporations engaged in the production of farm and dairy products, shall pay to their employees the wages earned each and every week in lawful money of the United States, and all such wages shall be due and payable and shall be paid by such corporations not later than Friday of each week for all such wages earned the preceding week. [G. S. 1915, § 5873.]

The constitutionality of this act was questioned in a suit brought in the district court of Sedgwick county. The employee had accepted a payment before the suit was brought. The district court gave judgment for the employer on the theory that the act was unconstitutional and void. On an appeal to the state supreme court it was held that the employee had concluded the matter by accepting payment, as such acceptance was held to be a waiver of the right to penalties, etc. The decision of the district court was affirmed on that ground, without passing upon the constitutionality of the act. *Howell v. Machine Co.*, 86 K. 537.

§ 551. Penalty for failure to pay employees as provided in preceding section; penalty due to employees. Whenever such corporation fails to pay any of their employees, as provided in section 1 of this act, then a penalty shall attach to such corporation and become due to such em-

employees, as follows: A sum equivalent to a penalty of five per cent per month as liquidated damages; and such penalty shall attach and become a judgment in any court of competent jurisdiction, and the penalty shall continue in full force and effect, including all the time intervening up to time of final payment. [G. S. 1915, § 5874.]

"Section 1 of this act," mentioned herein, is § 550, *supra*.

Concerning constitutionality of act, see note to foregoing section.

§ 552. Wages become due and payable as provided in preceding section when employee discharged. Whenever any employee is discharged from the employ of any such corporation, then the wages of such employee shall become due and payable in the same manner as heretofore described in section two. [G. S. 1915, § 5875.]

"Section two," mentioned herein, is § 551, *supra*.

§ 553. Time within which employee may recover such penalties. Any employee may recover all such penalties that may, by violations of sections two and three of this act, have accrued to him at any time within six months succeeding such default or delay in the payment of such wages. [G. S. 1915, § 5876.]

§ 554. Contract or agreement violating or evading provisions of this act unlawful and void. Any contract or agreement made between any such corporation and any parties in its employ, whose provisions shall be in violation, evasion or circumvention of this act, shall be unlawful and void in its effects as to such corporations. [G. S. 1915, § 5877.]

§ 555. Wages of employees of contractor doing work for such corporation payable as herein provided; liability of corporation to employees of such contractor. Whenever any such corporation shall contract any or all its work to any contractor, then it shall become the duty of such corporation to provide that the employees of such corporation or contractor shall be paid according to the provisions of this act, and such corporation shall become responsible and liable to the employees of such contractor in the same manner as if said employees were employed by such corporation. [G. S. 1915, § 5878.]

§ 556. Attorney fee taxed and collected as part of judgment when necessary for employee to bring suit for wages due as provided in this act. Whenever it shall become necessary for employees to enter or maintain a suit at law for the recovery or collection of wages due as provided by this act, then such judgment shall include a reasonable attorney fee, to be taxed as part of the costs in the case, and collected under the same provisions of law as such judgment. [G. S. 1915, § 5879.]

CHAPTER 44.—WORKMEN'S COMPENSATION ACT.

(Annotated to April 1, 1918.)

- §557. Employer liable to pay compensation for personal injury to employee in accordance with this act; cases in which employer shall not be liable under this act.
558. Act not to affect liability of employer or employee to fine or penalty.
559. Principal liable for compensation under this act to workmen of contractor under such principal; principal entitled to indemnity; workman may recover from contractor instead of from principal; accidents to which section shall not apply; principal contractor may implead subcontractor; principal contractor paying compensation may recover from subcontractor.
560. Remedies of workman against employer and other person liable for injury; workman not entitled to recover both damages and compensation; person paying compensation entitled to damages against person liable for injury.
561. Employment to which this act shall apply; employments determined to be especially dangerous; rights saved which accrued before publication of act; agricultural pursuits exempted; other employers may elect to come within provisions of act; written statement; employees of such employers within act unless election not to come within act filed.
562. Act not to apply to business or employments engaged in interstate commerce or to persons injured while so engaged.
563. Employers to whom act shall apply; number of employees; other employers may elect to come within act; all mines within provisions of act.
564. Definitions of words and phrases used in this act: "railway," "factory," "mine," "quarry," "electrical work," "building work," "engineering work," "employer," "workman," "dependents," "members of a family," and "arising out of and in the course of employment."
565. Guardian of workman mentally incompetent or a minor, or guardian of his dependent who is mentally incompetent or a minor may exercise right, privilege or election accruing under act; no limitation shall run when such person has no guardian.
566. Amount of compensation to which workman shall be entitled under this act; treatment and care of injured employees; compensation where death results from injury; compensation where death does not result from the injury; permanent loss of use of hand, arm, etc., considered as equivalent of loss of such hand, arm, etc.; compensation exclusive of other remedies or causes of action.
- §567. Rules to be observed in computing average annual earnings of a workman; credit to employer for amounts paid prior to award or judgment; average earnings as basis for compensation for later injury after previous disability.
568. Payments to be made in same manner as wages were payable; modification of such regulation by judge of district court.
569. Payment of compensation to dependents; when employer shall be discharged; distribution of such compensation among dependents; distribution of medical and funeral expenses where there are no dependents.
570. Claim for compensation, or compensation agreed upon, awarded, etc., not assignable or subject to levy, execution, attachment, garnishment, etc.; exemption cannot be waived.
571. Medical examination of employee by physician or surgeon selected by employer; either party may require report of physician or surgeon selected by the other party; fee; employee entitled to have physician or surgeon present; physician selected by employer not allowed to give evidence of condition unless opportunity given for physician selected by employee to participate in examination; testimony of physician.
572. Employment of neutral physician to make examination of injured person; expenses; petition.
573. Physician or surgeon of employer or employee not permitted to give evidence unless opportunity given to other party to have physician or surgeon make examination.
574. Refusal of employee to submit to medical examination; employee or physician or surgeon obstructing examination; employee's right to compensation suspended during such period.
575. Report of examination of employee by physician or surgeon or certificate issued not competent evidence unless supported by testimony of such physician or surgeon; report or certificate inadmissible when testimony inadmissible.
576. Proceedings for recovery of compensation under act not maintainable unless written notice served on employer; matters to be stated in such notice; claim for compensation required; service of notice; effect of want of or defect in notice or service; incapacity of employee.

§577. Compensation settled by agreement.

578. Settlement of compensation by committee representative of employer and workman if neither party objects; power of committee to adopt rules; settlement by single arbitrator; appointment of arbitrator; consent to arbitration to be in writing; questions referred; findings that may be required by either party.

579. Procedure before committee or arbitrator; making and filing of award; notice of filing; extension of time for filing award; order of court to compel committee or arbitrator to file award.

580. Fees of arbitrator; amount of such fees when not fixed by agreement; taxing of costs and fees of arbitrator; amount taxed to employer added to first payment; lien of arbitrator on first payments due under award.

581. Award to be in writing, signed, and acknowledged; award to specify amount due and unpaid by the employer to the workman; payments to be provided for; lump sum; credit for previous payments.

582. Modification of award by subsequent written agreement; agreement not valid unless filed by employer within sixty days.

583. Employer entitled to final receipt upon final payment; final receipt or release of liability to be filed by employer within sixty days; receipt or release void if not filed; clerk of district court to accept, receipt for, and file every award, agreement, final receipt, etc., or copy thereof, without fee; recording and indexing; county commissioners to furnish records and books.

584. Review of award, etc., by judge of district court before final payment made; application for review; appointment of physicians and surgeons to make examination and report; other evidence; grounds for modification of award; grounds for cancellation of award; awards to which section not applicable.

585. Lump sum judgment equal to 80 per cent of amount of payments due and unpaid; application for judgment; notice; hearing by court; ground for making application; judgment; execution not to issue if bond given and payments continued according to original award.

586. Stay of proceedings by employer on application of workman for judgment under preceding section; filing of certificate of insurance company, etc., that amount of compensation is insured by it; bond to secure payment of compensation; approval of certificate or bond by district judge.

587. Redemption of award by employer after payments made for six months; amount of lump sum to

be paid; determination of amount by agreement; application to judge of district court; notice; employer discharged from further liability.

§588. Insurer subrogated to rights and duties of employer where payment of compensation to workman is insured at expense of employer.

589. Construction of references in this act to district court having jurisdiction of civil action between the parties; court to make necessary rules.

590. Workman's right to compensation determined and enforced by action; consent to arbitration; right to jury deemed waived unless demanded; judgment for lump sum or periodical payments; review of judgment after six months; action where death results from injury; distribution of compensation; action to set aside release joined with action for compensation; action not to be brought outside the state; notice by publication.

591. Cause of action deemed accrued at time of accident; time within which action must be brought shall run from such date.

592. Claim of attorney at law for services not enforceable lien unless services performed under contract in writing; approval of contract by judge of district court; submission of matter to judge; notice.

593. Employer may contract with workman for substitution of scheme of compensation, benefit or insurance for provisions of this act; certificate of superintendent of insurance with written approval of attorney-general required; employer liable only in accordance with such scheme.

594. Scheme not to be certified unless provisions made for distribution of moneys or securities when scheme terminated.

595. Revocation of certificate and termination of such scheme by superintendent of insurance by and with attorney-general; causes for such revocation.

596. Employer to answer inquiries and furnish accounts to superintendent where certified scheme in effect.

597. Superintendent of insurance may make rules and regulations to carry out the four preceding sections.

598. Employers entitled to come within provisions of act deemed to have done so unless written statement filed with secretary of state; exception as to certain employers; change of election by filing written declaration; notice of election to be posted.

599. Employee entitled to come within provisions of act deemed to have done so unless written declaration of election not to accept filed with secretary of state and duplicate with employer before injury;

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| <p>change of election; contract requiring employee to make such election void.</p> <p>§600. Action by employee against employer who has elected not to come within provisions of act; defenses of assumption of risk or hazard, want of due care of fellow servant, and contributory negligence of employee, abrogated.</p> <p>601. Action against employer operating under provisions of act by employee who has filed election not</p> | <p>to accept thereunder; defenses of assumption of risk or hazard, want of due care of fellow servant, and contributory negligence of employee, continued; defenses not available where injury caused by willful negligence of employer or managing officer or agent.</p> <p>§602. Acts which shall not be construed to be amended or repealed by this act.</p> <p>603. Sections repealed by Laws of 1917, ch. 226.</p> |
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LAWS OF 1911, CH. 218, AS AMENDED BY LAWS OF 1913, CH. 216, AND LAWS OF 1917, CH. 226.

AN ACT to provide compensation for workmen injured in certain hazardous industries.

§ 557. Employer liable to pay compensation for personal injury to employee in accordance with this act; cases in which employer shall not be liable under this act. *The obligation.* If in any employment to which this act applies, personal injury by accident arising out of and in the course of employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation to the workman in accordance with this act. Save as herein provided no such employer shall be liable for any injury for which compensation is recoverable under this act: *Provided*, That (a) the employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he is employed: (b) if it is proved that the injury to the workman results from his deliberate intention to cause such injury, or from his willful failure to use a guard or protection against accident required pursuant to any statute and provided for him, or a reasonable and proper guard and protection voluntarily furnished him by said employer, or solely from his deliberate breach of statutory regulations affecting safety of life or limb, or from his intoxication, any compensation in respect to that injury shall be disallowed. [G. S. 1915, § 5896, as amended by Laws 1917, ch. 226, § 27; May 26.]

- Remedies under compensation act exclusive where both parties under act. *Shade v. Cement Co.*, 92 K. 147; *McRoberts v. Zinc Co.*, 93 K. 364.
- Act held valid; does not violate state or federal constitution. *Shade v. Cement Co.*, 93 K. 257.
- Action cannot be joined with common-law action for damages. *McRoberts v. Zinc Co.*, 93 K. 364.
- Case within compensation act, tried under other act, judgment sustained. *Frere v. Railway Co.*, 94 K. 57.
- Injury held not to be result of deliberate intent or of willful failure to use guard. *Messick v. McEntire*, 97 K. 813.
- Recovery can be had only for disability resulting from injury received in course of employment, without intervention of independent cause; not augmented by incompetent or negligent surgical treatment although employer responsible therefor. *Ruth v. Witherspoon-Englar Co.*, 98 K. 179.
- Evidence of manner in which injury received is ordinarily irrelevant; testimony of ill treatment by foreman may be prejudicial. *Ruth v. Witherspoon-Englar Co.*, 98 K. 179.
- Employer required to use ordinary care to provide employees with simple tools free from defect. *Tarin v. Railway Co.*, 98 K. 605.
- Matters relating to negligence are irrelevant in a petition under this act; when such matters stricken from petition. *Oliver v. Christopher*, 98 K. 660.
- Allegations negating anticipated defense unnecessary; when nonprejudicial. *Oliver v. Christopher*, 98 K. 660.
- Miner injured while walking from room where working to bottom of shaft, at end of day's work; injury arose out of and in course of employment. *Sedlock v. Mining Co.*, 98 K. 680.
- Averments in petition concerning negligence, mental pain and anguish, medical expenses and attorneys' fees not proper in action under this act. *Sillix v. Armour & Co.*, 99 K. 103, 107.

- Employer not liable in respect to injury which does not disable employee for period specified. *Dennis v. Cafferty*, 99 K. 810, 812.
- Whether or not a guard provided is safe, reasonable and proper is a question of fact to be determined from the evidence. *Binger v. Read*, 101 K. 303.
- Defense that injuries were result of negligence of employee in failing to procure proper medical attention held not sustained by the evidence. *Dobish v. Packing Co.*, 101 K. 764.
- Injury not shown to have occurred by accident in course of employment; evidence held not to show that injury occurred at defendant's plant. *Davis v. Packing Co.*, 101 K. 769.
- Evidence showed that workman fell and was hurt while working in defendant's plant; evidence held sufficient as against a demurrer. *Madey v. Swift & Co.*, 101 K. 771.
- Workman injured by having to wade through flood water which had overflowed defendant's car works, an old wound on his foot being infected, requiring an amputation; held the injury is one "by accident" and that it is one "arising out of and in the course of employment." *Monson v. Battelle*, 102 K. 208.
- Act does not extend to the case of a workman engaged in interstate commerce who, without his employer's fault, is injured in the course of his employment. *Matney v. Railway Co.*, 102 K. 293.
- Employee injured by having mortar playfully or wantonly thrown into his eye by a fellow workman; liability of employer considered. *Stuart v. Kansas City*, 102 K. 307.
- Workman who is injured by accident arising out of and in the course of the performance of his labor is entitled to compensation, although he cannot explain how the accident occurred. *Stuart v. Kansas City*, 102 K. 307.
- Compensation can be recovered where inability to labor is caused by pain resulting from an injury received in an accident arising out of and in the course of the employment. *Trowbridge v. Wilson & Co.*, 102 K. 521.

§ 558. Act not to affect liability of employer or employee to fine or penalty. *Reservation of penalties.* Nothing in this act shall affect the liability of the employer or employee to a fine or penalty under any other statute. [G. S. 1915, § 5897.]

§ 559. Principal liable for compensation under this act to workmen of contractor under such principal; principal entitled to indemnity; workman may recover from contractor instead of principal; accidents to which section shall not apply; principal contractor may implead subcontractor; principal contractor paying compensation may recover from subcontractor. Subcontracting. (a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of his trade or business or which he has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed. (b) Where the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of this section, and shall have a cause of action therefor. (c) Nothing in this section shall be construed as preventing a workman from recovering compensation under this act from the contractor instead of the principal. (d) This section shall not apply to any case where the accident occurred elsewhere than on or in, or about the premises on which the principal has undertaken to execute work or which are otherwise under his control or management, or on, in, or about the execution of such work under his control or management. (e) A principal contractor, when sued by a workman of a subcontractor, shall

have the right to implead the subcontractor. (f) The principal contractor who pays compensation voluntarily to a workman of a subcontractor shall have the right to recover over against the subcontractor. [G. S. 1915, § 5898.]

Statute attaches no liability for compensation to one who is not in the execution, control or management of the work wherein the injury occurs. *Maughliffe v. Mining Co.*, 99 K. 412, 420.

This section imposes on the principal only such liability as would rest on him had he employed the workman himself. *Roberts v. City of Ottawa*, 101 K. 228, 230.

§ 560. Remedies of workman against employer and other person liable for injury; workman not entitled to recover both damages and compensation; person paying compensation entitled to damages against person liable for injury. Remedies both against employer and stranger. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability against some person other than the employer to pay damages in respect thereof. (a) The workman may take proceedings against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and (b) if the workman has recovered compensation under this act, the person by whom the compensation was paid, or any person who has been called on to indemnify him under the section of this act relating to subcontracting, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the workman to recover damages therefor. [G. S. 1915, § 5899.]

§ 561. Employment to which this act shall apply; employments determined to be especially dangerous; rights saved which accrued before publication of act; agricultural pursuits exempted; other employers may elect to come within provisions of act; written statement; employees of such employers within act unless election not to come within act filed. Application of the act. That this act shall apply only to employment in the course of the employer's trade or business on, in or about a railway, factory, mine or quarry, electric, building or engineering work, laundry, natural gas plant, county and municipal work, and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain; each of which employments are hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risk to the life and limb of the workmen engaged therein are inherent, necessary, or substantially unavoidable, and as to each of which employment it is deemed necessary to establish a new system of compensation for injuries to workmen. This act shall not apply in any case where the accident occurred before this act takes effect, and all rights which have accrued, by reason of any such accident, at the time of the publication of this act, shall be saved the remedies now existing therefor and the court shall have the same power as to them as if this act had not been enacted. Agricultural pursuits and employments incident thereto are hereby declared to be nonhazardous and exempt from provisions of this act; provided, that employers whose work, trade or business is not such as described and included in this section of this act, and employers commencing or renewing in this state any work, trade or business, may elect to come within the provisions of this act by filing with the secretary of state a written statement of election

to accept thereunder, and such election shall be effective when so filed, and such election shall continue in effect unless and until such employer thereafter desiring to change his election shall do so by filing a written declaration thereof with the secretary of state, and the employee of any such employer so filing such election shall be included herein unless such employee elects not to come within this act as provided by section 24 of the act, and if the employee of such employer elects not to come within the provisions of this act, as herein provided, such election shall continue in effect unless and until such employee thereafter desiring to change his election shall do so by filing a written declaration thereof with the secretary of state. [G. S. 1915, § 5900, as amended by Laws 1917, ch. 226; § 1; May 26.]

"Section 24 of this act," mentioned herein, relates to section 24 of chapter 226 of the Laws of 1917, which is printed as § 599, *post*.

Cases construing section before last amendment:

Clerical employees in city clerk's office not within compensation act. *Udey v. City of Winfield*, 97 K. 279.

Liability of owner of mine for negligence of independent contractor, considered.

Maughlille v. Mining Co., 99 K. 412, 418.

Act does not apply to case of police officer of city who is killed in discharge of duties.

Griswold v. City of Wichita, 99 K. 502.

A county in resurfacing a county road is not engaged in trade or business within the terms or operation of this act; county not liable under this act to employee. *Gray v. Sedgwick County*, 101 K. 195.

Workman in mine who was injured on interurban track by being struck by an interurban car while going from one mine to another on a necessary errand, held not to have been injured by an accident on, in or about a mine, within the meaning of this act. *Bevard v. Coal Co.*, 101 K. 207.

A city in constructing a lateral sewer is not engaged in an enterprise involving any element of gain or profit, and therefore is not within the terms or operation of this act. *Roberts v. City of Ottawa*, 101 K. 228.

Injuries received by a truck driver while engaged in delivering meat to customers, held not to have been received on, in or about a factory or other designated establishment; recovery for such injuries not authorized by act. *Hicks v. Swift & Co.*, 101 K. 760.

Workman injured by having to wade through flood water which had overflowed defendant's car works, an old wound on his foot being infected, requiring an amputation; held injury occurred on premises where workman was employed. *Monson v. Battelle*, 102 K. 208.

Act does not extend to the case of a workman engaged in interstate commerce who, without his employer's fault, is injured in the course of his employment. *Matney v. Railway Co.*, 102 K. 293.

While constructing a sewer, a city is not engaged in an enterprise involving any element of gain or profit, and does not come within the terms or operation of this act. *Redfern v. City of Anthony*, 102 K. 484.

§ 562. Act not to apply to business or employments engaged in interstate commerce or to persons injured while so engaged. This act shall not be construed to apply to business or employments which, according to law, are so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged. [G. S. 1915, § 5901.]

Act does not extend to the case of a workman engaged in interstate commerce who, without his employer's fault, is injured in the course of his employment. *Matney v. Railway Co.*, 102 K. 293.

§ 563. Employers to whom act shall apply; number of employees; other employers may elect to come within act; all mines within provisions of act. It is hereby determined that the necessity for this law and the reason for its enactment, exist only with regard to employers who employ a considerable number of persons. This act, therefore, shall only apply to employers by whom five or more workmen have been (employed) continuously for more than one month at the time of the accident: *Provided, however*, That employers having less than five workmen may elect to come within the provisions of this act in which case his employees shall be in-

cluded herein, as hereinafter provided: *And provided further*, That this act shall apply to mines without regard to number of workmen employed. [G. S. 1915, § 5902.]

Election to come within act, under act of 1911, discussed. *Spottsville v. Cement Co.*, 94 K. 258.

Number of workmen employed, considered. *Udey v. City of Winfield*, 97 K. 279.

§ 564. Definitions of words and phrases used in this act: "railway," "factory," "mine," "quarry," "electrical work," "building work," "engineering work," "employer," "workman," "dependents," "members of a family," and "arising out of and in the course of employment." *Definitions.* In this act, unless the context otherwise requires: (a) "Railway" includes street railways and interurbans; and "employment on railways" includes work in depots, power houses, round houses, machine shops, yards, and upon the right of way, and in the operation of its engines, cars and trains, and to employees of express companies while running on railroad trains, except as provided in section 5901 of General Statutes of 1915. (b) "Factory" means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article or articles for the purpose of trade or gain or of the business carried on therein, including expressly any brick yard, meat-packing house, foundry, smelter, oil refinery, lime-burning plant, steam heating plant, electric lighting plant, electric power plant and water power plant, grain elevator, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, beet sugar factory, cement plant, artificial gas plant, machine or repair shop, salt plant, and chemical manufacturing plant. (c) "Mine" means any opening in the earth for the purpose of extracting any minerals and all underground workings, slopes, shafts, galleries and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven; and includes all the appurtenant structures at or about the openings of the mine, and any adjoining adjacent work place where the material from a mine is prepared for use or shipment. (d) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel, or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain or of employer's trade or business. (e) "Electrical work" means any kind of work in or directly connected with the construction, installation, operation, alteration, removal, or repair of wires, cables, switchboards or apparatus used for the transmission of electrical current, or operation of telegraph or telephone lines. (f) "Building work" means any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances. (g) "Engineering work" means any work in the construction, alteration, extension, repair or demolition of a railway (as hereinbefore defined), bridge, jetty, dyke, dam, reservoir, underground conduit, pole lines constructed or used for carrying conductors, sewer, oil or gas well, oil tank, gas tank, water tower, or waterworks (including standpipes or mains), any caisson work or work in artificially compressed air, any work in dredging, pile driving, moving buildings, moving safes, construction and repairing of streets, roads and highways, or in laying, repairing or removing underground pipes and connections; the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery (including belting and other connections), and any work in grading or excavating where shoring is necessary or power machinery or

blasting powder, dynamite or other high explosives are in use (excluding mining and quarrying). (h) "Employer" includes any person or body of persons, corporate or unincorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; and when any mine, quarry, factory, or other place, covered by the provisions of this act in which work is being or to be performed, is leased or let to any lessee or lessees under any form of contract or agreement other than on a royalty basis, then and in all such cases the lessee or lessees and the lessor or lessors shall be deemed to be operating said mine, quarry, factory or other place described above as employers jointly. (i) "Workman" means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer, but does not include a person who is employed otherwise than for the purpose of the employer's trade or business. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents, as hereinafter defined, or to his legal representatives, or where he is a minor or incompetent, to his guardian. (j) "Dependents" means such members of the workman's family as were wholly or in part dependent upon the workman at the time of the accident. "Members of a family," for the purpose of this act, means only widow or husband, as the case may be, and children; or if no widow, husband, or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section parents include step-parents, children include step-children, and grandchildren include step-grandchildren, and brothers and sisters include stepbrothers and stepsisters, and children and parents include that relation by legal adoption. In the meaning of this section a widow shall not be regarded as a dependent of a deceased workman nor as a member of his family, if she shall have for more than six months willfully or voluntarily deserted or abandoned him prior to the date of his death; and a husband, whether he be capable of wage earning or not, shall not, within the meaning of this section, be regarded as a dependent of his deceased wife, nor as a member of her family, if he shall have for more than six months willfully or voluntarily deserted or abandoned her prior to the time of her death. (k) The words "arising out of and in the course of employment" as used in this act shall not be construed to include injuries to the employee occurring while he is on his way to assume the duties of his employment or after leaving such duties, the approximate cause of which injury is not the employer's negligence. [G. S. 1915, § 5903, as amended by L. 1917, ch. 226, § 2; May 26.]

"Section 5901 of the General Statutes of 1915," mentioned herein, is § 562, *supra*. Cases construing section before last amendment:

Mother held partly dependent upon son, under facts stated. *Smith v. Sash & Door Co.*, 96 K. 816.

Adult son married and living with his wife and children, separate from his mother, not a member of his mother's family. *Taylor v. Sulzberger & Sons Co.*, 98 K. 169.

Meaning of "dependents" as used in this act, considered; persons included. *Taylor v. Sulzberger & Sons Co.*, 98 K. 169.

Miner injured while walking from room where working to bottom of shaft at end of day's work; injury arose out of and in course of employment. *Sedlock v. Mining Co.*, 98 K. 680.

Place where workman employed in making and repairing barrels, where no mechanical power used, not a "factory" within meaning of section. *Menke v. Hauber*, 99 K. 171.

Police officer of city of the first class is not a "workman" as defined by this act. *Griswold v. City of Wichita*, 99 K. 502.

"Legal adoption" means adoption according to the statute governing that subject, and does not extend to a child taken into a family and treated as natural offspring under an agreement to adopt, which was not performed. *Ellis v. Coal Co.*, 100 K. 187.

Dependency of parents upon minor son, considered; finding of partial dependency held sustained by evidence, although father shown to own property and to be employed. *Fennimore v. Coal Co.*, 100 K. 372.

A county in resurfacing a county road is not engaged in trade or business within the terms or operation of this act; county not liable under this act to employee. *Gray v. Sedgwick County*, 101 K. 195.

Workman in mine held not to be "about" a mine, within the terms of this act, when he was injured on an interurban track while going from one mine to another. *Bevard v. Coal Co.*, 101 K. 207.

"Factory" is restricted to the premises where [mechanical] power is used in manufacturing or preparing articles for sale; truck used in delivering not a part of factory. *Hicks v. Swift & Co.*, 101 K. 760.

§ 565. Guardian of workman mentally incompetent or a minor, or guardian of his dependent who is mentally incompetent or a minor may exercise right, privilege or election accruing under act; no limitation shall run when such person has no guardian. *Incompetency of workman.* In case an injured workman is mentally incompetent or a minor, or where death results from the injury, in case any of his dependents as herein defined is mentally incompetent or a minor, at the time when any right, privilege or election accrues to him under this act, his guardian may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in this act provided for, shall run, so long as such incompetent or minor has no guardian. [G. S. 1915, § 5904.]

§ 566. Amount of compensation to which workman shall be entitled under this act; treatment and care of injured employees; compensation where death results from injury; compensation where death does not result from the injury; permanent loss of use of hand, arm, etc., considered as equivalent of loss of such hand, arm, etc.; compensation exclusive of other remedies or causes of action. The amount of compensation under this act shall be: 1. *Treatment and care of injured employees.* On demand, the employer shall pay the cost, not exceeding \$150, of a physician and all such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus as may be reasonably necessary for a period of not longer than 50 days, to cure and relieve from the effects of the injury, and in case of the refusal or neglect of the employer to seasonably do so, the employer shall be liable for the reasonable expenses incurred by or on behalf of the employee in providing the same within the limits as to time and amount hereinbefore expressed: *Provided*, That no employer shall be liable for any medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, nor for any physician's or surgeon's fees in excess of the amount hereinbefore set forth. 2. *Where death results from injury.* (a) If a workman leaves any dependents wholly dependent upon his earnings, a sum equal to three times his average yearly earnings, computed as provided in section 4 of this act, but not exceeding thirty-eight hundred dollars (\$3800) and not less than fourteen hundred dollars (\$1400): *Provided*, That any payment under this act on account of any injury from which death shall thereafter result, except such payments as may be made under paragraph 1 of this section, shall be deducted from such sum: *And provided, however*, That if the workman does not leave any dependents citizens of and residing at the time of the accident and injury in the United States or the Dominion of Canada, the amount of compensation shall not exceed in any case the sum of seven hundred fifty dollars (\$750). (b) If a workman does not leave any such

dependents, but leaves dependents in part dependent on his earnings, such proportion of the amount payable under the provisions of paragraph 2 (a) of this section as may be agreed upon or determined to be proportionate to the degree of dependency of the said dependents. (c) If a workman does not leave any dependents, the reasonable expense of his burial, not exceeding one hundred and fifty dollars (\$150). (d) Marriage of any dependent shall terminate all compensation of such dependent, but shall not affect the compensation allowed other dependents. When any minor dependent, not physically or mentally incapable of wage earning shall become eighteen (18) years of age, such compensation shall cease. 3. *Where death does not result from the injury.* (a) Where total permanent disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in paragraph 1 of this section, but after the expiration of said first week, payment shall be made as provided in section 5907 of the General Statutes of 1915 during such permanent total disability of a sum equal to (60) sixty per cent of the average weekly earnings of the injured workman, computed as provided in section 4 of this act, but in no case less than \$6 per week, nor more than \$15 per week. The payment of compensation for total permanent disability shall not extend over a period exceeding eight years from the date of injury. Loss of both eyes, both hands, both arms, both feet or both legs shall, in the absence of proof to the contrary, constitute total permanent disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from an injury independent of all other causes, shall constitute total permanent disability. In all other cases total permanent disability shall be determined in accordance with the facts. (b) Where temporary total disability results from the injury no compensation shall be paid during the first week of disability, except that provided in paragraph 1 of this section, but after the expiration of said first week payment shall be made in accordance with the provisions of section 5907 of the General Statutes of 1915, during such temporary total disability, of a sum equal to sixty per cent of the average weekly earnings of the injured workman, computed as provided in section 4 of this act, but in no case less than \$6 per week nor more than \$15 per week: *Provided*, That if such temporary total disability is followed by a permanent partial disability resulting from the injury, payment for such permanent partial disability shall be made as provided in clause (c) of this paragraph of this section. (c) Where disability, partial in character but permanent in quality, results from the injury, the injured workman shall be entitled to the compensation provided in paragraph 1 of this section, but shall not be entitled to any other or further compensation for or during the first week following the injury. Thereafter, compensation in a lump sum shall be paid as provided in the following schedule, the average weekly wages to be computed as provided in section 4 of this act, and the compensation to be in no case less than \$6 per week nor more than \$12 per week.

(1) For the loss of a thumb, 50 per cent of the average weekly wages during 60 weeks.

(2) For the loss of a first finger, commonly called the index finger, 50 per cent of the average weekly wages during 37 weeks.

(3) For the loss of a second finger, 50 per cent of the average weekly wages during 30 weeks.

(4) For the loss of a third finger, 50 per cent of the average weekly wages during 20 weeks.

(5) For the loss of a fourth finger, commonly called the little finger, 50 per cent of the average weekly wages during 15 weeks.

(6) The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger, and the compensation shall be one-half of the amounts specified above. The loss of the first phalange and any part of the second phalange of any finger, which includes the loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of two-thirds of such finger, and the compensation shall be two-thirds of the amounts specified above. The loss of the first phalange and any part of the second phalange of a thumb, which includes the loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of the entire thumb. The loss of the first and second phalanges and any part of the third proximal phalanges of any finger, which includes loss of any part of the bone of the third or proximal phalange, shall be considered as the loss of the entire finger.

(7) For the loss of the great toe, 50 per cent of the average weekly wages during 30 weeks.

(8) For the loss of any other toe than the great toe, 50 per cent of the average weekly wages during 10 weeks.

(9) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and the compensation shall be one-half of the amounts above specified.

(10) The loss of more than one phalange of a toe shall be considered to be equal to the loss of the entire toe.

(11) For the loss of a hand, 50 per cent of the average weekly wages during 150 weeks.

(12) For the loss of an arm, 50 per cent of the average weekly wages during 210 weeks.

(13) For the loss of a foot, 50 per cent of the average weekly wages during 125 weeks.

(14) For the loss of a leg, 50 per cent of the average weekly wages during 200 weeks.

(15) For the loss of an eye, or the complete loss of the sight thereof, 50 per cent of the average weekly wages during 110 weeks.

(16) Amputation or severance between elbow and wrist shall be considered as the loss of a hand. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation between knee and ankle shall be considered as the loss of a foot. Amputation at or above the knee shall be considered as the loss of a leg.

(17) For the complete loss of hearing of both ears, 50 per cent of the average weekly wages during 100 weeks.

(18) For the complete loss of hearing of one ear, 50 per cent of the average weekly wages during 25 weeks.

(19) Should the employer and employee be unable to agree upon the amount of compensation to be paid in any case of injury not covered by the schedule, the amount of compensation shall be settled according to the provisions of this act as in other cases of disagreement: *Provided, however,* In case of partial disability not covered by schedule the workman shall receive during such period of partial disability not exceeding (8) eight years, 60 per cent of the difference between the amount he was earning prior to said injury as in this act provided and the amount he is able to earn after such injury.

(20) If a workman has received an injury for which compensation is being paid him, and his death is caused by other and independent causes, any payments of compensation already due him at the time of his death and then unpaid, shall be paid to his dependents direct, or to his legal representatives if he left no dependents, but the liability of the employer for payments of compensation not yet due and payable at the time of the death of such workman shall cease and be abrogated by his death.

(21) If a workman has suffered a previous disability and receives a later injury, the effects of which together with the previous disability shall result in total permanent disability, then and in that event the compensation due said workman shall be the difference between the amount provided in the schedule of this section for his prior injury and the total sum which would be due said employee for such total disability computed as provided in section 4 of this act but in no case less than \$6 per week nor more than \$15 per week.

(22) *Loss of use.* Permanent loss of the use of a hand, arm, foot, leg or eye, as a direct result of an injury, shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye.

(23) The compensation for the foregoing specific injuries shall be in lieu of all other compensation, except the benefits provided in paragraph 1 of this section. Where the said minor or his dependents are entitled to compensation under the provisions of this act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or cause of action shall inure or accrue to, or exist in favor of the parent or parents of such minor employee on account of any damage resulting to such parent or parents on account of the loss of earnings or loss of service of such minor employee resulting from or growing out of the injury to or death of such minor employee. In any case of injury to or death of a female employee, where the said female employee or her dependents are entitled to compensation under the provisions of this act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim of action shall inure or accrue to or exist in favor of the surviving husband or any relative or next of kin of such female employee on account of any damage resulting to such surviving husband or any relative or next of kin on account of the loss of earnings, services or society of such female employee or on any other account resulting from or growing out of the injury or death of such female employee. [G. S. 1915, § 5905, as amended by Laws 1917, ch. 226, § 3; May 26.]

"Section 5907 of the General Statutes of 1915," mentioned herein, is printed as § 568, *post*.

Cases construing section before last amendment:

Amount of compensation and when compensation shall cease, discussed. Gorrell v. Battelle, 93 K. 370.

Period over which award for permanent disability may extend. Cain v. Zinc Co., 94 K. 679, 680.

Allowance for medical attendance, discussed. Cain v. Zinc Co., 94 K. 682.

Measure of damages for partial disability, considered. Roberts v. Packing Co., 95 K. 723.

Amount of compensation in case of death, considered. McCracken v. Bridge Co., 96 K. 354.

Mother held partly dependent upon son, under facts stated. Smith v. Sash & Door Co., 96 K. 816.

Injury to fingers; employee unable to tightly close fingers in hand, held partially incapacitated. Gailey v. Manufacturing Co., 98 K. 53.

Right to compensation not lost by remaining in same employment after injury. Gailey v. Manufacturing Co., 98 K. 53.

Compensation terminated by marriage of dependent; effect of provision considered. Taylor v. Sulzberger & Sons Co., 98 K. 169.

- Not the policy of the act to continue compensation to minor dependent after reaching age of eighteen years, or to award compensation to adult married son for injury to mother. *Taylor v. Sulzberger & Sons Co.*, 98 K. 169.
- Period of incapacity as fixed by the jury held controlling; judgment reduced to correspond with finding of jury. *Girten v. Zinc Co.*, 98 K. 405. (Not decided that weekly allowance for partial incapacity may ever be less than twenty-five per cent of former average earnings. *Odrowski v. Swift & Co.*, 99 K. 163.)
- Loss of an eye; evidence held sufficient to show partial disability. *Oliver v. Christopher*, 98 K. 660.
- Judgment supported by special findings not overturned because general verdict not supported by evidence. *Oliver v. Christopher*, 98 K. 660.
- Expert evidence of physicians admissible in proof of fact that partial disability exists. *Sillix v. Armour & Co.*, 99 K. 103, 108.
- Lump-sum judgment obtained on basis of total disability not set aside on showing that injured employee is conducting a business at a profit. *Moore v. Manufacturing Co.*, 99 K. 443.
- Minimum of three dollars per week for partial incapacity is not to be withheld because employee finds other employment before expiration of the period of partial incapacity and is earning more wages than before the injury. *Dennis v. Cafferty*, 99 K. 810.
- Persons partly dependent upon earnings of deceased workman, considered; parents of minor son held partially dependent on such son although father shown to own property and have separate income. *Fennimore v. Coal Co.*, 100 K. 372.
- Permanent partial incapacity, finding held warranted by evidence of loss of the ends of the second and third fingers of the left hand of a workman who had already lost a part of the thumb and first finger of the same hand. *Seckman v. Cement Co.*, 100 K. 463.
- The payment of a minimum of three dollars a week for partial incapacity relates to the amount of recovery, and not merely to the manner of its payments: it means that the workman shall be entitled to receive at least that amount for every week that the incapacity continues until the statutory limit of eight years is reached. *Seckman v. Cement Co.*, 100 K. 463.
- Computation of amount of compensation where employee totally incapacitated for part of period and partially incapacitated for part of period, considered. *Sauvain v. Battelle*, 100 K. 468.
- Employee totally or partially incapacitated for hard manual labor not to be denied compensation because he obtains employment, even at better wages, at a task which he is physically able to perform. *Sauvain v. Battelle*, 100 K. 468.
- Findings of the jury as to partial and total incapacity held not to be inconsistent when construed together; slight discrepancy in amount of general verdict under special findings not sufficient to require reversal of judgment. *Roll v. Cement Co.*, 100 K. 616.
- Compensation can be recovered where inability to labor is caused by pain resulting from an injury received in an accident arising out of and in the course of the employment. *Tröwbridge v. Wilson & Co.*, 102 K. 521.

§ 567. Rules to be observed in computing average annual earnings of a workman; credit to employer for amounts paid prior to award or judgment; average earnings as basis for compensation for later injury after previous disability. *Rules for compensation.* 1. The average annual earnings of a workman shall, for the purpose of the provisions of this act, be computed as follows: (a) Where the workman has been continuously employed by the same employer for one year or longer, the actual amount of money paid by the employer to the employee as wages or remuneration for his services during the year immediately preceding the injury, undiminished by loss due to absence from work on account of illness or other unavoidable cause. (b) Where the workman has been employed less than one year by the employer in whose employ he received the injury, 52 times the average weekly amount of which, during the twelve months immediately preceding the accident, was being earned by a person in the same grade employed at the same work by the same employer, undiminished by loss due to absence from work on account of illness or other unavoidable cause; and if there is no person in the same grade employed at the same work by the same employer, then 52 times the average weekly earnings of a person in the same grade employed by the same or other employer in the same district at the same or similar work or employment. (c) Where the workman had entered into concurrent contracts of service with two or more employers under which he

worked at one time for one such employer and at another time for another such employer, his average annual earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the injury.

(d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed upon him by the nature of his employment, the sums so paid shall not be reckoned as part of the earnings of the workman; nor shall tips or gratuities received from the employer or other persons be considered or included as part of the workman's earnings, but reasonable value of board, rent, housing, lodging, fuel or other similar advantages received from the employer as a part of the remuneration of the employee and the value of which can be estimated in money, shall be considered and included as a part of the workman's earnings. (e) If arbitration or litigation is necessary to establish the amount of compensation, credit shall be given to the employer by the arbitrator, arbitration committee or court for any amounts paid under this act prior to the date of the award or prior to the trial and judgment.

2. The average weekly wages of a workman shall be one fifty-second part of his average annual earnings computed as provided by paragraph 1 of this section.

3. In computing average earnings of a workman under the preceding paragraphs of this section regard shall be had to the earnings for what is commonly regarded as a day's work or week's work for the employment on which the average earnings are calculated.

4. If a workman has suffered a previous disability and receives a later injury, his average earnings used as a basis for the compensation for such later injury shall be such amount as will reasonably represent his earning capacity at the time of the later injury in the employment at which he was working at such time. [G. S. 1915, § 5906, as amended by L. 1917, ch. 226, § 4; May 26.]

Cases construing section before amendment:

Amount of compensation and when compensation shall cease, discussed. *Gorrell v. Battelle*, 93 K. 370.

Deduction for payment for medical attendance, discussed. *Cain v. Zinc Co.*, 94 K. 682.

Measure of damages for partial disability, considered. *Roberts v. Packing Co.*, 95 K. 723.

Right to compensation not lost by remaining in same employment after injury. *Gailey v. Manufacturing Co.*, 98 K. 53.

Manner of obtaining credit for payments made after injury, considered. *Gailey v. Manufacturing Co.*, 98 K. 53.

Average earnings should be pleaded; when failure to plead average earnings not prejudicial. *Sillix v. Armour & Co.*, 99 K. 103, 108.

Minimum of three dollars per week for partial incapacity is not to be withheld because employee finds other employment before expiration of period of partial incapacity and is earning more wages than before injury. *Dennis v. Cafferty*, 99 K. 810.

Minimum of three dollars a week applies for partial disability until the end of the eight-year period, regardless of what the workman can earn or what he does earn during that time. *Seckman v. Cement Co.*, 100 K. 463.

Employee totally or partially incapacitated for hard manual labor not to be denied compensation because he obtains employment, even at better wages, at a task he is physically able to perform. *Sauvain v. Battelle*, 100 K. 468.

§ 568. Payments to be made in same manner as wages were payable; modification of such regulation by judge of district court. *Payments to the injured workman.* The payments shall be made at the same time, place and in the same manner as the wages of the workman were payable at the time of the accident, but a judge of any district court having jurisdiction upon the application of either party may modify such regulation in a particular case as to him may seem just. [G. S. 1915, § 5907.]

Right to compensation not lost by remaining in same employment at same wages after injury. *Gailey v. Manufacturing Co.*, 98 K. 53.

§ 569. Payment of compensation to dependents; when employer shall be discharged; distribution of such compensation among dependents; distribution of medical and funeral expenses where there are no dependents. *Compensation to dependents, etc.* Where death results from the injury and the dependents of the deceased workman as herein defined, have agreed to accept compensation, and the amount of such compensation and the apportionment thereof between them has been agreed to or otherwise determined, the employer may pay such compensation to them accordingly (or to an administrator if one be appointed) and thereupon be discharged from all further liability for the injury. Where only the apportionment of the agreed compensation between the dependents is not agreed to, the employer may pay the amount into any district court having jurisdiction, or to the administrator of the deceased workman, with the same effect. Where the compensation has been so paid into court or to an administrator, the proper court, upon the petition of such administrator or any of such dependents, and upon such notice and proof as it may order shall determine the distribution thereof among such dependents. Where there are no dependents, medical and funeral expenses may be paid and distributed in like manner. [G. S. 1915, § 5908.]

§ 570. Claim for compensation, or compensation agreed upon, awarded, etc., not assignable or subject to levy, execution, attachment, garnishment, etc.; exemption cannot be waived. No claim for compensation, or compensation agreed upon, awarded, adjudged, or paid, shall be assignable or subject to levy, execution, attachment, garnishment, or any other remedy or procedure for the recovery or collection of a debt, and this exemption cannot be waived. [G. S. 1915, § 5909, as amended by Laws 1917, ch. 226, § 5; May 26.]

G. S. 1915, § 5910, was repealed by Laws 1917, ch. 226, § 28, printed as § 603, *post*.

Cases construing section before amendment:

Payment for medical attendance from compensation allowed, discussed. *Cain v. Zinc Co.*, 94 K. 682.

The question whether an injured workman may assign a judgment under this act to a trustee for the benefit of his children, considered but not determined. *Monson v. Battelle*, 102 K. 208.

A lump-sum judgment in favor of an injured workman does not abate by his death, but may be revived in the name of an administrator. *Monson v. Battelle*, 102 K. 208.

§ 571. Medical examination of employee by physician or surgeon selected by employer; either party may require report of physician or surgeon selected by the other party; fee; employee entitled to have physician or surgeon present; physician selected by employer not allowed to give evidence of condition unless opportunity given for physician selected by employee to participate in examination; testimony of physician. *Medical examination.* (a) After an injury to an employee, he shall, upon request of the employer, submit himself for examination at some reasonable time and place, to a reputable physician or surgeon selected by the employer, and shall so submit himself for examination thereafter at intervals during the pendency of his claim for compensation and during the receipt by him of payments under this act, upon request of the employer, but he shall not be required to submit himself for examination oftener than once in four weeks unless in accordance with such orders as may be made by the judge of the district court wherein proceedings may be had for the determination or collection of his compensation. Either party may upon demand require a report of any examination

made by the physician or surgeon selected by the other party, upon payment of a fee of \$1 therefor, but the employee shall not be liable for any fees or charge of any physician or surgeon selected by the employer for making any examination of the employee. (b) If the employee requests he shall be entitled to have a physician or surgeon of his own selection present at the time to participate in such examination. (c) Unless there be a reasonable opportunity thereafter for such physician selected by the employee to participate in the examination in the presence of the physician selected by the employer, the physician selected by the employer shall not be permitted afterwards to give evidence of the condition of the employee in a dispute as to the injury. (d) Except as provided herein, there shall be no other disqualification or privilege preventing the testimony of a physician who actually makes an examination. [G. S. 1915, § 5911, as amended by Laws 1917, ch. 226, § 6; May 26.]

§ 572. Employment of neutral physician to make examination of injured person; expenses; petition. *Medical examination by neutral physician.* In case of a dispute as to the injury, the committee, or arbitrator as hereinafter provided, or the judge of the district court shall have the power to employ a neutral physician of good standing and ability, whose duty it shall be, at the expense of the parties to make an examination of the injured person, as the court may direct, on the petition of either or both the employer and employee or dependents. [G. S. 1915, § 5912.]

§ 573. Physician or surgeon of employer or employee not permitted to give evidence unless opportunity given to other party to have physician or surgeon make examination. If the employer or the employee has a physician or surgeon make such examination and no reasonable opportunity is given to the other party to have his physician or surgeon make examination, then, in case of a dispute as to the injury, the physician of the party making such examination shall not give evidence before the court in any action for compensation. [G. S. 1915, § 5913, as amended by Laws 1917, ch. 226, § 7; May 26.]

§ 574. Refusal of employee to submit to medical examination; employee or physician or surgeon obstructing examination; employee's right to compensation suspended during such period. *Refusal of medical examination.* If the employee refuses to submit himself for examination upon request of the employer as provided for in section 6 of this act, or if the employee or his physician or surgeon unnecessarily obstructs or prevents such examination by the physician or surgeon of the employer, the employee's right to payment of compensation shall be and remain suspended until he shall submit to examination and until such examination shall have taken place, and no compensation shall be payable under this act during the period of suspension. [G. S. 1915, § 5914, as amended by Laws 1917, ch. 226, § 8; May 26.]

§ 575. Report of examination of employee by physician or surgeon or certificate issued not competent evidence unless supported by testimony of such physician or surgeon; report or certificate inadmissible when testimony inadmissible. *Certificate of physician.* No report of any examination of any employee by a physician or surgeon, as hereinbefore in this act provided for, nor any certificate issued or given by the physician or surgeon making such examination, shall be competent evidence in any court proceeding for the determining or collection of compensation unless supported by the testimony of such physician or surgeon, if his testimony

is admissible, nor competent evidence in any case where the testimony of such physician or surgeon is not admissible. [G. S. 1915, § 5915, as amended by Laws 1917, ch. 226, § 9; May 26.]

§ 576. Proceedings for recovery of compensation under act not maintainable unless written notice served on employer; matters to be stated in such notice; claim for compensation required; service of notice; effect of want of or defect in notice or service; incapacity of employee. *Notice and claim.* Proceedings for the recovery of compensation under this act shall not be maintainable unless written notice of the accident, stating the time, place and particulars thereof, and the name and address of the person injured, has been given within ten days after the accident, and unless a claim for compensation has been made within three months after the accident or in case of death, within six months from the date thereof. Such notice shall be delivered by registered mail, or by delivery to the employer. The want of, or any defect in such notice, or in its service, shall not be a bar unless the employer proves that he has, in fact, been thereby prejudiced, or if such want or defect was occasioned by mistake, physical or mental incapacity or other reasonable cause, and the failure to make a claim within the period above specified shall be a bar: *Provided, however,* That in case of incapacity of an injured employee the limitation herein shall not run during such incapacity. [G. S. 1915, § 5916.]

Employer may, by acts, waive notice, etc., required. *Roberts v. Packing Co.*, 95 K. 723. Formal notice not given in time; employer had sufficient notice. *Ackerson v. Zinc Co.*, 96 K. 781.

Necessity of making claim; facts show sufficient claim made. *Ackerson v. Zinc Co.*, 96 K. 781.

Claim for compensation before commencement of action rendered unnecessary. *Halverhout v. Milling Co.*, 97 K. 484.

Claim for compensation need not be in writing; any statement, oral or written, within proper time, by which employee makes known to employer that he is claiming compensation, is sufficient. *Galley v. Manufacturing Co.*, 98 K. 53.

Failure to give notice in ten days; employer cannot avoid payment unless prejudiced thereby. *Knoll v. City of Salina*, 98 K. 428.

Recovery not barred by failure to make written demand within three months, where oral demand made within such time. *Knoll v. City of Salina*, 98 K. 428.

Act requiring claims or demands against city to be itemized and verified held applicable to claims under this act. *Knoll v. City of Salina*, 98 K. 428.

Costs not recoverable against city unless claim itemized and verified. *Knoll v. City of Salina*, 98 K. 428.

Claim need not be in writing; held act fully complied with. *Sillix v. Armour & Co.*, 99 K. 103, 107.

Compliance with section should be pleaded; when failure to plead compliance not prejudicial. *Sillix v. Armour & Co.*, 99 K. 103, 107.

Failure to make claim for compensation within three months after the accident is a bar to recovery. *Smith v. Process Co.*, 100 K. 40.

Failure to give notice within ten days after the accident is not a bar if no prejudice to the employer results, or if failure occasioned by mistake, incapacity, etc. *Smith v. Process Co.*, 100 K. 40.

Presentation of claim for compensation held not to have been waived or rendered unnecessary under facts stated. *Knowling v. Morris & Co.*, 101 K. 205.

§ 577. Compensation settled by agreement. *Agreements.* Compensation due under this act may be settled by agreement. [G. S. 1915, § 5917, as amended by Laws 1917, ch. 226, § 10; May 26.]

Cases discussing agreements and releases:

Release of liability not invalid because amount paid was just what the statute made due at the time. *Odowski v. Swift & Co.*, 99 K. 163.

Causes for which agreement may be set aside, considered. *Weathers v. Bridge Co.*, 99 K. 632.

Act recognizes legality of a voluntary settlement and release; in absence of fraud or mutual mistake the satisfaction and release cannot be set aside on the ground of gross inadequacy of compensation. *Dotson v. Manufacturing Co.*, 102 K. 248.

Evidence examined and held sufficient to sustain a judgment setting aside a release. *Vogler v. Bowersock*, 102 K. 456.

Release signed when parties were mutually mistaken as to the extent of plaintiff's injuries held not binding, the sum therein named being manifestly inadequate. *Smith v. Kansas City*, 102 K. 518.

§ 578. Settlement of compensation by committee representative of employer and workman if neither party objects; power of committee to adopt rules; settlement by single arbitrator; appointment of arbitrator; consent to arbitration to be in writing; questions referred; findings that may be required by either party. *Arbitration.* If compensation be not so settled by agreement: (a) If any committee representative of the employer and the workman exists, organized for the purpose of settling disputes under this act, said committee shall have the power to adopt rules governing its procedure and action, and the matter shall, unless either party objects by notice in writing delivered or sent by registered mail to the other party before the committee meets to consider the matter, be settled in accordance with said rules by such committee or by an arbitrator selected by it. (b) If either party objects or there is no such committee, or the committee or the arbitrator to whom it refers the matter fails to settle it within sixty days from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or appointed by any judge of a court where an action might be maintained upon the written application of either party to said court. The consent to arbitration shall be in writing and signed by the parties, and may limit the fees of the arbitrator and the time within which the award must be made, and unless such consent or order of appointment expressly refers other questions, only the question of the amount of compensation shall be deemed to be in issue, but either party shall have the right to require that the arbitrator shall also find the character and quality of the disability and the period for which payments of compensation shall continue in accordance with the provisions of this act. [G. S. 1915, § 5918, as amended by Laws 1917, ch. 226, § 11; May 26.]

§ 579. Procedure before committee or arbitrator; making and filing of award; notice of filing; extension of time for filing award; order of court to compel committee or arbitrator to file award. *Duties of arbitrator.* The committee or arbitrator shall not be bound by technical rules of procedure or evidence but shall give the parties reasonable opportunity to be heard and to present evidence, and shall act reasonably and without partiality, and shall make and file an award, with the consent to arbitration or the order of the court appointing the arbitrator attached, in the office of the clerk of the proper district court within sixty days after the committee meets to consider the claim or after the selection of the arbitrator, and shall give notice of such filing to the parties by mail. The parties may agree in writing to extend the time for filing the award, and if so, the award shall be filed within such extended time as is so agreed upon. If any committee or arbitrator to whom a claim for compensation shall have been submitted shall fail or neglect to file its or his award within the time fixed by this section, the court shall, upon the application of either party, order such committee or arbitrator to file such award within such time as the court shall by such order fix, which time shall in no case be greater than ten days from the date of such order. [G. S. 1915, § 5919, as amended by Laws 1917, ch. 226, § 12; May 26.]

§ 580. Fees of arbitrator; amount of such fees when not fixed by agreement; taxing of costs and fees by arbitrator; amount taxed to employer added to first payment; lien of arbitrator on first payments due under award. *Arbitrator's fees.* The arbitrator's fees shall be fixed by the consent to arbitration or be agreed to by the parties before the arbi-

tration, and if not so fixed or agreed to, they shall not exceed ten dollars per day, for not to exceed ten days and disbursements for expense. The arbitrator shall tax or apportion the costs of such fees in his discretion and shall add the amount taxed or apportioned against the employer to the first payment made under the award, and he shall note the amount of his fees on the award and shall have a lien therefor on the first payments due under the award. [G. S. 1915, § 5920.]

§ 581. Award to be in writing, signed, and acknowledged; award to specify amount due and unpaid by the employer to the workman; payments to be provided for; lump sum; credit for previous payments. *Form of agreement and award.* Every award of compensation made by any committee representing the employer and workman, or by any arbitrator selected by such committee, or by any arbitrator selected by the employer and the employee, or appointed by order of court, shall be in writing, signed and acknowledged by the arbitrator or by the secretary of the committee hereinbefore referred to, and shall specify the amount due and unpaid by the employer to the workman up to the date of the award, and, if any, the amount of the payments thereafter to be paid by the employer to the workman and the length of time such payment shall continue. No award shall be or provide for payment of compensation in a lump sum, except as to such portion of the compensation as shall be found to be due and unpaid at the time of the award, and credit shall be given to the employer in such award for any amount or amounts paid by him to the employee as compensation prior to the date of the award. [G. S. 1915, § 5921, as amended by Laws 1917, ch. 226, § 13; May 26.]

§ 582. Modification of award by subsequent written agreement; agreement not valid unless filed by employer within sixty days. *Filing agreements, awards, etc.* Any award of compensation may be modified by subsequent written agreement of the parties, but no such agreement modifying an award shall be valid as against the workman unless such agreement or a verified copy thereof be filed by the employer in the office of the clerk of the district court in the county in which the accident occurred, within sixty days after the execution of such agreement. [G. S. 1915, § 5922, as amended by Laws 1917, ch. 226, § 14; May 26.]

Cases construing section before amendment:

Any release of liability by a workman or any agreement for or award of compensation to a workman made under the act is void as against the workman unless it is filed by the employer in the office of the clerk of the district court of the county within sixty days. *Rodermal v. Salt Co.*, 101 K. 141.

Section cited in considering question whether act applies to injuries received outside of the state. *Hicks v. Swift & Co.*, 101 K. 760.

§ 583. Employer entitled to final receipt upon final payment; final receipt or release of liability to be filed by employer within sixty days; receipt or release void if not filed; clerk of district court to accept, receipt for, and file every award, agreement, final receipt, etc., or copy thereof, without fee; recording and indexing; county commissioners to furnish records and books. *Final receipts.* At the time of making any final payment of compensation, the employer shall be entitled to a final receipt for compensation, executed and acknowledged or verified by the workman, which final receipt may be in form a release of liability under this act, and every such final receipt for compensation or release of liability or a duly verified copy thereof shall be filed by the employer in the office of the clerk of the district court wherein the accident occurred, within sixty days after the date of execution of such final receipt or release of lia-

bility, and if the employer shall fail or neglect to so file such final receipt or release of liability, same shall be void as against the workman. The said clerk of the district court shall accept, receipt for, and file every award, agreement modifying an award, final receipt for compensation or release of liability or verified copy thereof, without fee, and record and index same in a book kept for that purpose. All records and books necessary for the clerk of the district court in order to carry out all the provisions of this law, shall be furnished to said clerk upon request, by the board of county commissioners. [Laws 1917, ch. 226, § 15; May 26.]

Grounds for setting aside release considered; release defined. *Weathers v. Bridge Co.*, 99 K. 632, 638.

§ 584. Review of award, etc., by judge of district court before final payment made; application for review; appointment of physicians and surgeons to make examination and report; other evidence; grounds for modification of award; grounds for cancellation of award; awards to which section not applicable. *Review, modification or cancellation of agreement or award.* At any time before the final payment has been made under or pursuant to any award or modification thereof agreed upon by the parties, it may be reviewed by the judge of the district court having jurisdiction, upon the application of either party, and in connection with such review the court may appoint a physician or surgeon or two physicians or surgeons to examine the workman and report to the court, and the court shall hear all competent evidence offered, and if the court shall find that the award has been obtained by fraud or undue influence or that the committee or arbitrator making the award acted without authority or was guilty of serious misconduct or that the award is grossly excessive or grossly inadequate, or that the incapacity or disability of the workman has increased or diminished, the court may modify such award, upon such terms as may be just, by increasing or diminishing the compensation, subject to the limitations hereinbefore provided in this act; and, if the court shall find that the workman has returned to work for the same employer in whose employ he was injured or for another employer and is earning the same or higher wages than he did at the time of the accident or injury, or is gaining an income from any trade or employment which is equal to or greater than the wages he was earning at the time of the accident or injury, or shall find that the workman has absented himself and continues to absent himself so that a reasonable examination cannot be made of him by a physician or surgeon selected by the employer, or has departed beyond the boundaries of the United States or Dominion of Canada, the court may cancel the award and end the compensation: *Provided*, That the provisions of this section shall not apply to awards of compensation provided for in the schedule of specific injuries in section 3 of this act. [G. S. 1915, § 5923, as amended by Laws 1917, ch. 226, § 16; May 26.]

"Section 3 of this act," mentioned herein, is § 566, *ante*.

G. S. 1915, § 5924, was repealed by Laws of 1917, ch. 226, § 28, printed as § 603, *post*.

Cases construing section before amendment:

Provision for reexamination of amount of compensation applies only where agreement or award has been filed with clerk, and not to judgments rendered in actions. *Roberts v. Packing Co.*, 98 K. 750.

Release, if within terms of section, must be covered by the term agreement; cancellation of release considered. *Odrowski v. Swift & Co.*, 99 K. 163.

Provision for cancellation of "award" because grossly inadequate or excessive not applicable to release. *Odrowski v. Swift & Co.*, 99 K. 163.

Power of court to cancel agreements considered; grounds for cancellation. *Weathers v. Bridge Co.*, 99 K. 632.

Agreement fixing compensation, and release given on payment of amount agreed upon, may be set aside where compensation fixed is grossly inadequate and agreement made under mutual mistake as to nature and extent of injuries. *Weathers v. Bridge Co.*, 99 K. 632.

This section relates only to the statutory agreements and awards made in conformity with the act, and not to voluntary settlements and releases. *Dotson v. Manufacturing Co.*, 102 K. 248.

§ 585. Lump sum judgment equal to 80 per cent of amount of payments due and unpaid; application for judgment; notice; hearing by court; ground for making application; judgment; execution not to issue if bond given and payments continued according to original award. *Judgments on agreements or awards.* At any time before final payment of compensation has been made under or pursuant to any award, or agreement of the parties modifying same, the workman may, upon notice to the employer, apply to the said district court for judgment against the employer for a lump sum equal to 80 per cent of the amount of payments due and unpaid and prospectively due under said award; and unless the proceeding be stayed as hereinafter provided in section 18 of this act, or unless said award be canceled as provided in section 16 of this act, or the liability thereunder redeemed as provided in section 19 of this act, the court shall hear all competent evidence offered, and if satisfied that the workman's application for judgment is made because of doubt as to the security of his compensation, shall compute the sum and enter judgment accordingly, as if in an action: *Provided*, That if the employer shall give a good and sufficient bond, approved by the court, no execution shall issue on such judgment so long as the employer continues to make payments in accordance with the original award undiminished by the discount. [G. S. 1915, § 5925, as amended by Laws 1917, ch. 226, § 17; May 26.]

Case construing section before amendment:

"Section 16 of this act," mentioned herein, is § 584, *supra*.

"Section 18 of this act," mentioned herein, is § 586, *post*.

"Section 19 of this act," mentioned herein, is § 587, *post*.

Section held to apply only in case of agreement or award. *Roberts v. Packing Co.*, 95 K. 723, 731.

§ 586. Stay of proceedings by employer on application of workman for judgment under preceding section; filing of certificate of insurance company, etc., that amount of compensation is insured by it; bond to secure payment of compensation; approval of certificate or bond by district judge. In any proceeding upon the application of a workman for a judgment against his employer upon an award, as provided in section 17 of this act, and before judgment has been granted, the employer may stay the proceedings upon such application by filing in the office of the clerk of the district court wherein the proceedings are pending: (a) A certificate of a licensed or authorized insurance company, or reciprocal or inter-insurer's exchange or association that the amount of the compensation to the workman is insured in it; or (b) a proper bond undertaking to secure the payment of the compensation. Such certificate or bond shall first be approved by the judge of the said district court. [Laws 1917, ch. 226, § 18; May 26.]

"Section 17 of this act," mentioned herein, is § 585, *supra*.

§ 587. Redemption of award by employer after payments made for six months; amount of lump sum to be paid; determination of amount by agreement; application to judge of district court; notice; employer discharged from further liability. *Redemption of liability.* Where payments

under an award have been made for not less than six months, the liability under such award may be redeemed by the employer at his option by the payment to the workman of a lump sum equal to 80 per cent of the amount of payments due and unpaid and prospectively due under the award, such amount to be determined by agreement, or, in default thereof, upon application of either party, upon notice to the other party by the judge of the district court having jurisdiction. Upon paying such amount, the employer shall be discharged of and from all further liability under said award. [G. S. 1915, § 5927, as amended by Laws 1917, ch. 226, § 19; May 26.]

Case construing section before amendment:

Section held to apply only in case of agreement or award. *Roberts v. Packing Co.*, 95 K. 723, 732.

§ 588. Insurer subrogated to rights and duties of employer where payment of compensation to workman is insured at expense of employer. *Insurance.* Where the payment of compensation to the workman is insured, by a policy or policies, at the expense of the employer, the insurer shall be subrogated to the rights and duties under this act of the employer, so far as appropriate. [G. S. 1915, § 5928.]

§ 589. Construction of references in this act to district court having jurisdiction of civil action between the parties; court to make necessary rules. *Courts.* All references hereinbefore to a district court of the state of Kansas having jurisdiction of a civil action between the parties shall be construed as relating to the then existing code of civil procedure. Such court shall make all rules necessary and appropriate to carry out the provisions of this act. [G. S. 1915, § 5929.]

§ 590. Workman's right to compensation determined and enforced by action; consent to arbitration, etc.; right to jury deemed waived unless demanded; judgment for lump sum or periodical payments; review of judgment after six months; action where death results from injury; distribution of compensation; action to set aside release joined with action for compensation; action not to be brought outside the state; notice by publication. *Actions.* A workman's right to compensation under this act may, in default of agreement or if the employer shall have refused to consent to an arbitration of the workman's claim for compensation, be determined and enforced by action in any court of competent jurisdiction, but no such action shall be maintained until and unless the workman shall have consented to an arbitration or applied to the court as hereinbefore provided for an arbitrator. In every such action the right to trial by jury shall be deemed waived and the case tried by the court without a jury, unless either party shall within ten days after issues are joined demand a jury trial. The judgment in the action, if in favor of the plaintiff, shall be for a lump sum equal to the amount of the payments then due under this act, with interest on the payments overdue, or, in the discretion of the trial judge, for, periodical payments, as in an award: *Provided*, In no case shall a lump sum judgment be rendered for any injury not ascertainable by objective examination, but in such cases the court may order periodical payments during incapacity of such sums as may be due under the provisions of section 4 of this act and such judgment may be reviewed at any time after the expiration of six months upon application of either party and the amount allowed by the court reduced or raised in accordance with the evidence introduced at the time of such review. Where death results from injury, the action shall be brought by the dependent or the

dependents entitled to the compensation or by the legal representative of the deceased for the benefit of the dependents as herein defined; and in such action the judgment may provide for the proportion of the compensation to be distributed to or between the several dependents; otherwise such proportion shall be determined by the proper probate court. An action to set aside a release or other discharge of liability on the ground of fraud or mental incompetency may be joined with an action for compensation under this act. No action or proceeding provided for in this act shall be brought or maintained outside of the state of Kansas, and notice thereof may be given by publication against nonresidents of the state in the manner now provided by article 6 of chapter 93, General Statutes of Kansas of 1915, so far as the same may be applicable, and by service of a true copy of the first publication within 21 days after the date of the said first publication unless excused by the court upon proper showing that such service cannot be made. [G. S. 1915, § 5930, as amended by Laws 1917, ch. 226, § 20; May 26.]

"Article 6 of chapter 93, General Statutes of Kansas of 1915," is article 6 of the code of civil procedure and contains the provisions of the code relating to service by publication.

Cases construing section before amendment:

Amount and manner of awarding compensation, discussed. *Gorrell v. Battelle*, 93 K. 370.

Judgment for lump sum or periodical payments discretionary with court. *Cain v. Zinc Co.*, 94 K. 680; *Roberts v. Packing Co.*, 95 K. 723; *McCracken v. Bridge Co.*, 96 K. 355; *McCracken v. Bridge Co.*, 96 K. 799; *Halverhout v. Milling Co.*, 97 K. 484; *McCorkle v. Mill & Elevator Co.*, 99 K. 131.

Effort to agree or procure arbitration not prerequisite to action. *Ackerson v. Zinc Co.*, 96 K. 781; *Halverhout v. Milling Co.*, 97 K. 484.

Exercise of discretion by trial court, considered. *Girten v. Zinc Co.*, 98 K. 405. (Not decided that weekly allowance for partial incapacity may ever be less than twenty-five per cent of former average earnings. *Odrowski v. Swift & Co.*, 99 K. 163.)

Provision for reexamination of amount of compensation cannot be extended to judgments under this section. *Roberts v. Packing Co.*, 98 K. 750.

Application to modify judgment because of subsequent developments is in nature of petition for new trial and must be made within one year. *Roberts v. Packing Co.*, 98 K. 750.

Failure to accept offer made by employer not a bar to recovery by employee. *Sillix v. Armour & Co.*, 99 K. 103, 105.

Refusal to continue action to permit time to elapse to ascertain whether injuries temporary or permanent, when more than a year had passed since injury, held not error. *McCorkle v. Mill & Elevator Co.*, 99 K. 131.

Release of liability not invalid because amount paid was just what the statute made due at the time. *Odrowski v. Swift & Co.*, 99 K. 163.

Power of courts to cancel releases, considered; grounds for cancellation. *Odrowski v. Swift & Co.*, 99 K. 163.

Lack of agreement or arbitration constitutes dispute between the parties; when employee entitled to maintain action to have facts determined. *Sillix v. Armour & Co.*, 99 K. 426.

Where employer in answer raises question of duration and extent of incapacity of workman, he cannot be heard to say there was no dispute. *Sillix v. Armour & Co.*, 99 K. 426.

Lump-sum judgment based on finding of permanent disability not set aside on showing that injured workman is conducting a business at a profit. *Moore v. Manufacturing Co.*, 99 K. 443.

Jury trial deemed waived unless demanded, but where it is not demanded, a court may call a jury to find the facts and may render judgment on the findings of the jury. *Ruth v. Witherspoon-Englar Co.*, 100 K. 608.

Where a trial by jury is demanded and special questions are answered, but no general verdict is returned, a judgment compelled by the answers to the questions will not be reversed. *Ruth v. Witherspoon-Englar Co.*, 101 K. 406.

In actions to enforce compensation where the validity of a release or other discharge of liability is involved, either party may, when the case is called for trial, demand a trial of that issue by a jury. *Vogler v. Bowersock*, 102 K. 456.

Evidence examined and held sufficient to sustain a judgment setting aside a release. *Vogler v. Bowersock*, 102 K. 456.

Release signed when parties were mutually mistaken as to the extent of plaintiff's injuries held not binding, the sum therein named being manifestly inadequate. *Smith v. Kansas City*, 102 K. 518.

§ 591. Cause of action deemed accrued at time of accident; time within which action must be brought shall run from such date. *When the cause of action accrues.* The cause of action shall be deemed in every case, including a case where death results from the injury, to have accrued to the injured workman or his dependents or legal representatives at the time of the accident; and the time limit in which to commence an action for compensation therefor shall run as against him, his legal representatives and dependents from the date of the accident. [G. S. 1915, § 5931, as amended by Laws 1917, ch. 226, § 21; May 26.]

§ 592. Claim of attorney at law for services not enforceable lien unless services performed under contract in writing; approval of contract by judge of district court; submission of matter to judge; notice. *Attorney's fees.* No claim of any attorney at law for services rendered in or about securing any compensation or agreement, award or judgment for compensation shall be an enforceable lien thereon unless the services were rendered pursuant to and under the terms of a written contract between such attorney at law and the workman or the guardian of the workman, if the latter be a minor or incompetent, nor unless such written contract be approved in writing by the judge of the court where the action brought by the workman be tried, or, if no trial is had, then by the judge of the district court in the county where the workman resided at the time of the injury, to which judge the matter may be regularly submitted on due notice to the party or parties in interest of such submission. [G. S. 1915, § 5932, as amended by Laws 1917, ch. 226, § 22; May 26.]

§ 593. Employer may contract with workman for substitution of scheme of compensation, benefit or insurance for provisions of this act; certificate of superintendent of insurance with written approval of attorney-general required; employer liable only in accordance with such scheme. *Certificate required.* If the superintendent of insurance by and with the advice and written approval of the attorney-general certifies that any scheme of compensation, benefit or insurance for the workman of an employer in any employment to which this act applies, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workman, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act or their equivalents, the employer, may, while the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act; and thereupon the employer shall be liable only in accordance with that scheme; but, save as aforesaid, this act shall *not* apply notwithstanding any contract to the contrary made after this act becomes a law. [G. S. 1915, § 5933.]

§ 594. Scheme not to be certified unless provisions made for distribution of moneys or securities when scheme terminated. *Condition to certificate.* No scheme shall be so certified which does not contain suitable provisions for the equitable distribution of any moneys or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already accrued, if and when such certificate is revoked or the scheme otherwise terminated. [G. S. 1915, § 5934.]

§ 595. Revocation of certificate and termination of such scheme by superintendent of insurance by and with attorney-general; causes for such revocation. *Certificate to be revocable.* If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or other valid and substantial reasons therefor exist, the superintendent of insurance by and with the attorney-general shall revoke the certificate and the scheme shall hereby be terminated. [G. S. 1915, § 5935.]

§ 596. Employer to answer inquiries and furnish accounts to superintendent where certified scheme in effect. *Information to be reported.* Where a certified scheme is in effect the employer shall answer all such inquiries and furnish all such accounts in regard thereto as may be required by the superintendent. [G. S. 1915, § 5936.]

§ 597. Superintendent of insurance may make rules and regulations to carry out the four preceding sections. The superintendent of insurance may make all rules and regulations necessary to carry out the purposes of the four preceding sections. [G. S. 1915, § 5937.]

§ 598. Employers entitled to come within provisions of act deemed to have done so unless written statement filed with secretary of state; exception as to certain employers; change of election by filing written declaration; notice of election to be posted. *Employer's election.* Every employer entitled to come within the provisions of this act, as defined and provided by this act, shall be presumed to have done so, except such employer privileged to elect to come within the provisions of this act, as provided in section 1 hereof and section 5902 of the General Statutes of 1915, unless such employer shall file with the secretary of state at Topeka, Kansas, a written statement that he elects not to accept thereunder, and thereafter any such employer desiring to change his election shall only do so by filing a written declaration thereof with the secretary of state. Notice of such election shall be forthwith posted by such employer in conspicuous places in and about his place of business. [G. S. 1915, § 5938, as amended by Laws 1917, ch. 226, § 23; May 26.]

"Section 1, hereof," mentioned in the foregoing section, relates to Laws 1917, ch. 226, § 1, which is printed as § 561, *supra*.

"Section 5902 of the General Statutes of 1915," mentioned in the above section, is § 563, *supra*.

Employer presumed within act until contrary appears. *Gorrell v. Battelle*, 93 K. 370. Employer not coming under act, employee entitled to other remedies. *Smith v. Cement Co.*, 94 K. 501.

§ 599. Employee entitled to come within provisions of act deemed to have done so unless written declaration of election not to accept filed with secretary of state and duplicate with employer before injury; change of election; contract requiring employee to make such election void. *Employee's election.* Every employee entitled to come within the provisions of this act shall be presumed to have done so unless such employee shall file with the secretary of state, before injury, a written declaration that he elects not to accept thereunder and at the same time file a duplicate of said election with his employer, and thereafter any such employee desiring to change his election shall only do so by filing a written declaration thereof with the secretary of state, and a duplicate of same with his employer. Any contract wherein an employer requires of an employee as a condition of employment that he shall elect not to come within the provisions of this act shall be void. [G. S. 1915, § 5939, as amended by Laws 1917, ch. 226, § 24; May 26.]

Employee not deprived of other rights if election made. *Shade v. Cement Co.*, 93 K. 258. Employer not coming under act, employee entitled to other remedies. *Smith v. Cement Co.*, 94 K. 501.

§ 600. Action by employee against employer who has elected not to come within provisions of act; defenses of assumption of risk or hazard, want of due care of fellow servant and contributory negligence of employee, abrogated. *Defenses abrogated.* In any action to recover damages for a personal injury sustained within this state by an employee (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injuries so sustained, in which recovery is sought upon the ground of want of due care of the employer, or of any officer, agent or servant of the employer, where such employer is within the provisions hereof, it shall not be a defense to any employer (as herein in this act defined) who shall have elected, as hereinbefore provided, not to come within the provisions of this act: (a) That the employee either expressly or impliedly assumed the risk of the hazard complained of. (b) That the injury or death was caused in whole or in part by the want of due care of a fellow servant. (c) That such employee was guilty of contributory negligence. [G. S. 1915, § 5940, as amended by Laws 1917, ch. 226, § 25; May 26.]

Cases construing section before amendment:

Section held valid. *Hovis v. Refining Co.*, 95 K. 505.

Contributory negligence on part of engineer, considered. *Ballou v. Railway Co.*, 95 K. 761.

Assumption of risk, considered. *Drake v. Street Railway Co.*, 96 K. 727.

Contributory negligence not a bar to recovery; considered by jury in assessing damages. *Marshall v. Anderson*, 98 K. 573.

Section cited in considering question whether act applies to injuries received outside of the state. *Hicks v. Swift & Co.*, 101 K. 760.

§ 601. Action against employer operating under provisions of act by employee who has filed election not to accept thereunder; defenses of assumption of risk or hazard, want of due care of fellow servant and contributory negligence of employee, continued; defenses not available where injury caused by willful negligence of employer or managing officer or agent. *Defenses continued.* In an action to recover damages for a personal injury sustained within this state by an employee (entitled to come within the provisions of this act) while engaged in the line of his duty as such, or for death resulting from personal injury so sustained in which recovery is sought upon the ground of want of due care of the employer or any officer, agent or servant of the employer, and where such employer at the time of the injury is operating under the provisions of this act and has not filed his election not to accept thereunder, it shall be a defense for such employer in all cases where said employee has elected not to come within the provisions of this act; (a) that the employee either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of the fellow servant; (c) that said employee was guilty of contributory negligence: *Provided, however,* That none of these defenses shall be available where the injury was caused by the willful negligence of such employer, or of any managing officer, or of managing agent of said employer. [G. S. 1915, § 5941, as amended by Laws 1917, ch. 226, § 26; May 26.]

Section cited in considering question whether act applies to injuries received outside of the state. *Hicks v. Swift & Co.*, 101 K. 760.

§ 602. Acts which shall not be construed to be amended or repealed by this act. Nothing in this act shall be construed to amend or repeal section 6999 of the General Statutes of Kansas of 1909, or house bill No. 240 of the Session of 1911, the same being "An act relating to the liability of common carriers by railroads to their employees in certain cases, and repealing all acts and parts of acts so far as the same are in conflict herewith." [G. S. 1915, § 5942.]

"Section 6999 of the General Statutes of Kansas of 1909," referred to herein, is § 435, *ante*.

"House bill No. 240 of the Session of 1911," referred to herein, is Laws 1911, ch. 239. Said chapter is printed as §§ 461-466, *ante*.

§ 603. Sections repealed by Laws of 1917, ch. 226. That sections 5896, 5900, 5903, 5905, 5906, 5909, 5910, 5911, 5913, 5914, 5915, 5917, 5918, 5919, 5921, 5922, 5923, 5924, 5925, 5926, 5927, 5930, 5931, 5932, 5938, 5939, 5940, 5941 of the General Statutes of 1915 and all acts and parts of acts in conflict herewith are hereby repealed. [Laws 1917, ch. 226, § 28; May 26.]

CHAPTER 45.—WRONGFUL DEATH.

§604. Action for death caused by wrongful act or omission may be brought by personal representatives of deceased; time for bringing such action; limit of amount of dam-

ages; distribution of amount obtained.

§605. Widow or next of kin may bring such action for wrongful death in certain cases.

PART OF LAWS OF 1909, CH. 182 (CODE OF CIVIL PROCEDURE).

§ 604. Action for death caused by wrongful act or omission may be brought by personal representatives of deceased; time for bringing such action; limit of amount of damages; distribution of amount obtained. When the death of one is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the later, if the former might have maintained an action had he lived, against the latter for an injury for the same act or omission. The action must be commenced within two years. The damages cannot exceed ten thousand dollars, and must inure to the exclusive benefit of the widow and children, if any, or next of kin, to be distributed in the same manner as personal property of the deceased. [G. S. 1915, § 7323.]

Wrongful death of nonresident; Kansas administrator may still bring action. *Cox Adm'r, v. Kansas City*, 86 K. 298.

Action by widow against city; notice by injured person unnecessary. *Nesbit v. City of Topeka*, 87 K. 394.

Mining statute comes within provisions of this section. *Cheek v. Railway Co.*, 89 K. 247.

Factory act comes within provisions of this section. *Mott, Adm'r, v. Long*, 90 K. 111.

Foreign special administrator cannot maintain action for death of resident. *Metrakos v. Railway Co.*, 91 K. 342.

Action maintainable for wrongful death on Fort Leavenworth military reservation. *Hoffman v. Power Co.*, 91 K. 450.

Action revived and settled by administrator; recovery hereunder barred. *Berner v. Mercantile Co.*, 93 K. 769.

Section discussed in connection with "workmen's compensation act." *Taylor v. Sulzberger & Sons Co.*, 98 K. 173.

Person who may bring action when deceased engaged in interstate commerce, considered. *Giersch v. Railway Co.*, 98 K. 452.

Limitation of time for bringing action prescribed in this act applies to action brought under employers' liability act (§§ 461-466, *ante*) for wrongful death of employee. *Harwood v. Railway Co.*, 101 K. 215.

Cases construing similar section of *Old Code*:

Administrator appointed in another state may sue under this section. *K. P. Rly. Co. v. Cutter*, 16 K. 569.

Injury inflicted in another state; section has no extraterritorial force. *McCarthy, Adm'r, v. Railroad Co.*, 18 K. 46.

Recovery is to be of pecuniary compensation for pecuniary loss. *K. P. Rly. Co. v. Cutter*, 19 K. 83.

Claim prosecuted for benefit of widow, etc.; not an estate. *Perry, Adm'r, v. St. J. & W. Rld. Co.*, 29 K. 420.

Administration granted upon estate of a minor. *Wheeler, Adm'r, v. St. J. & W. Rld. Co.*, 31 K. 640.

Time for bringing action considered. *A. T. & S. F. Rld. Co. v. King*, 31 K. 710.

Administrator appointed in another state may not bring action, when. *Limekiller, Adm'r, v. H. & St. J. Rld. Co.*, 33 K. 88.

Nominal damages recovered when no actual pecuniary damages shown. *A. T. & S. F. Rld. Co. v. Weber, Adm'r*, 33 K. 543.

Manumission of minor child, considered by jury; not prevent recovery. *St. J. & W. Rld. Co. v. Wheeler*, 35 K. 185.

Action under Missouri statute; plaintiffs must bring themselves within statute. *Hamilton v. H. & St. J. Rld. Co.*, 39 K. 56.

Contributory negligence a matter of defense. *Mo. Pac. Rly. Co. v. McCally*, 41 K. 639.

Amount of recovery considered. *C. K. & W. Rld. Co. v. Bockoven*, 53 K. 279; *A. T. & S. F. Rld. Co. v. Rowe*, 56 K. 411; *Gas Co. v. Carter*, 65 K. 565.

Provision is remedial and prospective; applicable to statutory liabilities. *Vickers v. Cloud County*, 59 K. 88.

Limitation of action; condition imposed upon exercise of right. *Rodman v. Railway Co.*, 65 K. 645.

Averments of widowhood, etc., not allegations of authority within § 7002. *Vaughn v. Railroad Co.*, 65 K. 685.

Next of kin; husband may recover for wife's death. *Railway Co. v. Townsend*, 71 K. 524.

Nonresident, alien parents, may maintain action for minor son's death. *Railway Co. v. Fajardo*, 74 K. 314.

Action not maintainable where deceased had no right of action. *Sewell v. Railway Co.*, 78 K. 1; *Railway Co. v. Rudolph*, 78 K. 695.

§ 605. Widow or next of kin may bring such action for wrongful death in certain cases. That in all cases where the residence of the party whose death has been or hereafter shall be caused as set forth in the next preceding section is or has been at the time of his death in any other state or territory, or when, being a resident of this state, no personal representative is or has been appointed, the action provided in said section may be brought by the widow, or where there is no widow, by the next of kin of such deceased. [G. S. 1915, § 7324.]

Wrongful death of nonresident; Kansas administrator may still bring action. *Cox, Adm'r, v. Kansas City*, 86 K. 298.

Action by widow against city; notice by injured person unnecessary. *Nesbit v. City of Topeka*, 87 K. 394.

Action under mining act may be brought by widow. *Cheek v. Railway Co.*, 89 K. 247.

Action under factory act may be brought by widow. *Mott, Adm'r, v. Long*, 90 K. 111.

Wrongful death of husband; poisoned food; widow may maintain action. *Parks v. Pie Co.*, 93 K. 334.

Section held to afford cumulative but not exclusive remedy. *Robinson v. Railway Co.*, 96 K. 656.

Section discussed in connection with "workmen's compensation act." *Taylor v. Sulzberger & Sons Co.*, 98 K. 173.

Person who may bring action when deceased engaged in interstate commerce, considered. *Giersch v. Railway Co.*, 98 K. 452.

Cases construing similar section of *Old Code*:

Section held constitutional; supplemental act; section merely change of remedy. *Berry v. K. C. Ft. S. & M. Rld. Co.*, 52 K. 759.

Action brought by widow after section went into effect. *Berry v. K. C. Ft. S. & M. Rld. Co.*, 52 K. 759.

Section application when death results; necessary allegations of petition. *City of Eureka v. Merrifield*, 53 K. 794.

Effect of section, considered; merely change of remedy. *A. T. & S. F. Rld. Co. v. Napole*, 55 K. 401.

Necessary allegations of petition concerning nonappointment of personal representative: amendment. *Walker v. O'Connell*, 59 K. 306.

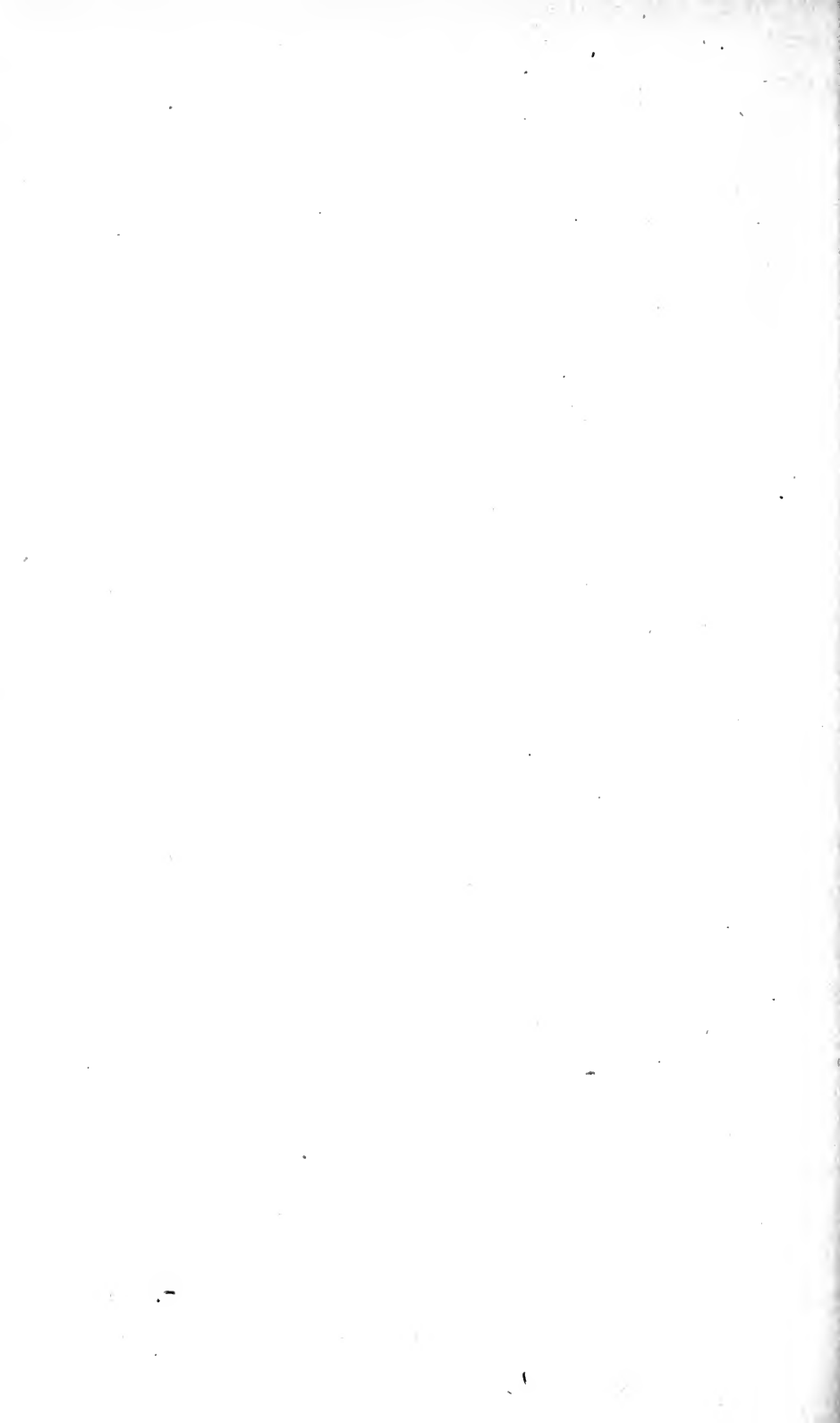
"Next of kin," defined; admissions by next of kin. *Railway Co. v. Ryan*, 62 K. 682.

Averments of widowhood, etc., not allegations of authority within § 110. *Vaughn v. Railroad Co.*, 65 K. 685.

Next of kin; husband may recover for death of wife. *Railway Co. v. Townsend*, 71 K. 524.

Necessary for plaintiff to prove widowhood, nonappointment of administrator, etc. *Bastine v. A. T. & S. F. Rly. Co.*, 71 K. 854.

Nonresident, alien parents, may maintain action for minor son's death. *Railway Co. v. Fajardo*, 74 K. 314.



INDEX.

ABANDONED MINES—	section	AIR-SHAFTS—	section
Fences about entrance to be maintained	336	See <i>Escape-shafts in Coal Mines.</i>	
Openings to abandoned portion of mine to be securely gobbed or blocked off	345	AIR-WAYS—	See <i>Ventilation of Coal Mines.</i>
Penalty for failure to comply with provisions of act	340	ANTIPASS ACT—	See <i>Free Passes, etc., on Railroads.</i>
Report to mine inspector when mine abandoned	331	APPRENTICES—	
ACCIDENTS—		Action for damages by master, time for bringing action	38
Accidents to be reported	11	Affidavit of master indorsed on indenture	17
Annual report of factory inspector, report of accidents	12	Age of apprentice inserted in indenture	24
Coal mines—		Bail for appearance of apprentice... ..	30
—Applicability of accident-reporting act	14	Bound again when discharged by court on removal of master	36
—Attendance of witnesses	339	Commitment of apprentice in default of bail	30
—Costs of investigation	339	Complaint when apprentice absconds or rebels, etc.	29
—Duty of inspector to investigate	339	Complaints of apprentices, probate court to receive	26
—Investigation by inspector when coroner does not investigate	339	Complaints of masters against apprentices	28
—Notice to coroner when any person killed	339	Custody of apprentice committed to another person on default of master to give bond	35
—Notice to mine inspector when loss of life or serious accident results	339	Damages recoverable by master when apprentice absents himself from service of master	38
Duty of factory inspector to make investigation and recommendations ..	11	Desertion by apprentice, order to make restitution, costs	28
Failure to send notices and statements required, penalty	13	Discharge of apprentice by probate court	27
Industrial establishments in which accidents to be reported	11	Discharge of apprentice when master removes or quits trade	36
Inquest, attendance by inspector or deputy	11	Executor may bind out child with consent of mother	33
Mine-rescue work. — See <i>Mine-rescue Work.</i>		Executor may raise child with consent of mother	33
Penalty for failure to report accidents, Public utilities commission, powers, etc.—See note to ch. 36.	13	Executor to bring apprentice into court on death of all masters	37
Railroads.—See note to ch. 36.		Forfeiture by person counseling, etc., apprentice to run away	31
Salt mines, applicability of accident-reporting act	14	Grievances, probate court to redress ..	23
Statement not competent evidence	11	Incapacity, etc., of father of child ..	19
Statement to be sent to state factory inspector	11	Indenture, counterpart deposited with probate court	21
ACTIONS—		Indenture not entered into according to law, void	25
Death, violation of health-and-safety act concerning mines	337	Indenture, probate court to enforce terms, etc.	23
Injury or damage from violation of health-and-safety act relating to mines	337	Indenture survive on death of one master	37
Wrongful death—		Infants may bind themselves, when ..	16
—Action may be brought by personal representatives of deceased	604	Master may consent to discharge of apprentice from imprisonment	30
—Distribution of amount obtained	604	Master may recover forfeiture for counseling, etc., apprentice to run away	31
—Limit of amount of damages	604	Master not to remove apprentice out of state	22
—Next of kin may bring action in certain cases	605	Master wishing to remove or quit trade, proceedings	36
—Time for bringing such action	604	Minor, guardian may bind	21
—Widow may bring action in certain cases	605	Mother may give consent or retain custody	18
See, also, <i>Damages; Industrial Welfare Commission; Injunctions in Labor Cases; Manufacturing Establishments; Mine Inspector; Wages; Workmen's Compensation Act.</i>		Orders concerning money, etc., paid or contracted to be paid	27
AIR-COURSES—		Orphan, clause to be inserted in indenture	22
See <i>Break-throughs in Coal Mines.</i>			
AIR-GATES—			
See <i>Ventilation of Coal Mines.</i>			

INDEX.

APPRENTICES— <i>continued</i> :		section	BARBER BOARD— <i>continued</i> :		section
Orphan, guardian may bind.....	21		Copy of sanitary rules furnished to each person having certificate.....	50	
Person bound shall serve for time specified	15		Employing person without certificate, penalty	59	
Poor child, clause to be inserted in indenture	22		Examination of applicants.....	56	
Poor child may be bound by probate court	20		Examination of appointees on board by state board of health.....	50	
Probate court to bind apprentice again upon discharge.....	27		Excess money used for schools.....	53	
Punishment of apprentice	28		Extension of permit for good cause shown	56	
Recognizance by master about to remove apprentice from state.....	34		Failure to comply with sanitary rules, penalty	59	
Return of warrant in vacation, bail..	30		Failure to keep certificate, etc., displayed, penalty.....	59	
Run-away apprentice, forfeiture by person entertaining, etc.....	32		Fee for license or certificate.....	55	
Run-away apprentice, master may recover forfeiture for entertaining, etc.	32		Grounds for revocation of licenses...	58	
Trial of complaints by jury.....	26		Inspection of record of certificates, permits, etc.	58	
Two masters, indenture survive on death of one master.....	37		Issuance of certificate of registration..	55	
Warrant for master about to remove apprentice out of state.....	34		Knowledge of contagious and infectious diseases	50	
Warrant issued when apprentice absconds, etc.	29		Majority of board may perform duties, Members, bond and oath.....	51	50
See, also, <i>Industrial Welfare Commission</i> .			Money in excess of \$500 paid over to state treasurer	53	
ARBITRATION—			Notice and opportunity for hearing, etc., before certificate revoked.....	58	
See <i>Boards of Arbitration; Workmen's Compensation Act</i> .			Officers of board, headquarters, etc....	51	
ASSEMBLIES—			Payment of compensation of members and traveling expenses.....	52	
See <i>Unlawful Assemblies</i> .			Penalty for practicing as barber without certificate	59	
ASSUMPTION OF RISK—			Permit to practice until next regular examination	56	
See <i>Damages; Workmen's Compensation Act</i> .			Public examinations	54	
ATTORNEY-GENERAL—			Publication of notice of public meetings of board.....	54	
Duty to appear for industrial welfare commission	246		Qualifications of applicant.....	56	
Overhead structures over railroad, actions to enjoin	434		Qualifications of members of board...	50	
Prosecution of railroad company violating act concerning hours of labor,	460		Quarterly report to the governor....	53	
ATTORNEY'S FEES—			Register of persons holding certificates, permits, etc.	58	
See <i>Blacklisting; Damages; Industrial Welfare Commission; Wages; Workmen's Compensation Act</i> .			Reissuance of certificate or permit, application	58	
AWARDS—			Revocation of licenses.....	58	
See <i>Boards of Arbitration; Workmen's Compensation Act</i> .			Sanitary rules	50	
BARBER BOARD—			Sanitary rules, penalty for failure to comply with	59	
Administration of oaths.....	51		School or college teaching trade, act not to prevent person attending...	57	
Affidavit, etc., of person engaged in occupation April 30, 1913.....	55		Term of office of examiners.....	50	
Annual renewal of certificate, fee....	55		Traveling expenses of members of board	52	
Application by person desiring to pursue occupation, fee.....	56		Unlawful to follow occupation of barber without certificate.....	49	
Application for reissuance of certificate, permit, etc.....	58		Vacancies on board, how filled.....	50	
Appointment of members of board....	50		Violation of act, penalty.....	59	
Apprentice, person may serve as, license issued by board.....	57		BARBERS—		
Barber schools and colleges, board to be judges	56		See <i>Barber Board</i> .		
Barbers in practice April 30, 1913...	49		BATH-HOUSES AT COAL MINES—		
Board of examiners created.....	50		Authority of mine inspector over bath-houses	299	
Card or certificate to be furnished by board	58		Bath-houses already in existence, provisions concerning	299	
Card or certificate to be posted in front of working chair.....	58		Cast-off wearing apparel to be removed from bath-house by persons using bath-house	300	
Certificate of board of health to appointee on board	50		Concrete flooring in wash-room or bathroom	297	
Certificate of registration to applicants	56		Employees responsible for property left in bath-house.....	297	
Compensation of members of board...	52		Employees to furnish towels, soap, lock for locker, etc.....	297	
			Equipment of bath-house.....	297	
			Failure of owner, lessee, etc., to comply with act, penalty.....	299	
			Floor space required.....	297	

INDEX.

BATH-HOUSES AT COAL MINES—

<i>continued:</i>	<i>section</i>
Inspector of mines to have supervision of law	299
Mines to which act shall not apply	297
Number of lockers or hangers required	297
Number of shower baths	297
Owner, lessee, etc., not liable for property left in bath-house	298
Owner, lessee, etc., to keep bath-house clean and sanitary	297
Owner, lessee, etc., to provide	297
Penalty for committing nuisance, etc., in bath-house	301
Penalty for failure to remove cast-off wearing apparel from bath-house	301
Separate offense each day act not complied with	299
Specifications for lockers or hangers	297
Specifications for walls, floors, and lockers	297
Unlawful to commit nuisance, etc., in bath-house	300

BELT-SHIFTERS—

See *Manufacturing Establishments.*

BILL OF RIGHTS—

Bailable offenses	5
Corruption of blood, conviction not to work	8
Due course of law	10
Former jeopardy	6
Free speech	7
Habeas corpus, when right to writ suspended	4
Imprisonment for debt	9
Jury, right to trial by	2
Justice without delay	10
Libel	7
Liberty of the press	7
Punishment, cruel or unusual, not to be inflicted	6
Right of people to assemble, etc., and petition government	1
Slavery and involuntary servitude prohibited	3
Transported, person not to be	8
Trial, defense of accused	6
Trial, speedy and public, by impartial jury	6

BLACK POWDER—

See *Explosives.*

BLACKLISTING—

Attorney fee taxed as part of costs in damage suit	63
Cause of discharge to be furnished (unconstitutional)	61
Employer not to prevent discharged employee from obtaining other employment	60
Liability of employer to party injured	63
Penalty for violation of act	62

BLACKMAIL, ETC.—

See *Paroled and Discharged Prisoners.*

BLACKSMITHS—

Lien for labor	264-266
See, also, <i>Liens for Labor.</i>	

BOARD OF EXAMINERS—

See *Barber Board; Examining Board for Miners; Plumbers, Examination and Certification.*

BOARDS OF ARBITRATION—

Award impeached for fraud, etc.	42
Award made matter of record by filing, etc.	47
Award of tribunal final, exception	42

BOARDS OF ARBITRATION—

<i>continued:</i>	<i>section</i>
Award of umpire impeached for fraud, accident, or mistake	47
Compensation of members of tribunal	44
Disputes between employers and employed	39
District court or judge to establish tribunal	39
Duration of tribunal	42
Enforcement of award	47
Establishment of tribunal	39
Examination of books, etc.	45
Extra session to be convened by chairman	45
Form of petition for tribunal	48
Inquiry by judge, order	40
Judgment on award	47
Jurisdiction of tribunal	42
License for tribunal when petition properly signed	41
Members of board, by whom and when named	41
Oaths administered to witnesses by chairman	45
Organization of tribunal, chairman, secretary	43
Petition, form, who shall sign, etc.	40
Petition praying for tribunal, form of	48
Petition to be presented	39
Powers of umpire	45
Questions to be defined in writing before umpire proceeds	47
Room to be furnished at county seat	44
Rules to be made by tribunal	46
Sessions and adjournments, tribunal to fix	46
Sessions held at county seat	44
Submission of matters to chairman of tribunal	45
Submission of matters to umpire	47
Umpire to be appointed, duties	42
Vacancies on board, how filled	42

BOND—

See *Liens for Labor; Workmen's Compensation Act.*

BOREHOLES IN COAL MINES—

Distance to be kept in advance	335
Penalty for failure to comply with provisions of act	340
Required on sides in certain cases	335

BRATTICE-CLOTH—

See *Ventilation of Coal Mines.*

BREAK-THROUGHS IN COAL MINES—

Area of air-courses	344
Compensation for making break-throughs, as between employer and employee	344
Distance between break-throughs	343
Filling of break-throughs as other break-throughs are made	344
Operations to cease until break-throughs perfected	344
Penalty for failure to comply with act	358
Repair of break-throughs partly open or torn down	344
Room and pillar, required in mines operated by system of	343
Width and height of break-throughs	344
See, also, <i>Escape-shafts in Coal Mines.</i>	

BUILDING WORK—

See *Construction Work; Workmen's Compensation Act.*

CABOOSES—

See *Way Cars or Caboosees.*

INDEX.

CAMPAIGN FUND—	<i>section</i>	CHILD LABOR—continued:	<i>section</i>
Unlawful for officer, employee, or appointee in classified civil service to contribute	111	Sixteen, child under, not employed in mine or quarry or dangerous occupation	68
CASE-LINE—		Taking child for employment as acrobat, etc., penalty	81
Duty of owner of mine where natural strata not safe	347	Truancy—	
CERTIFICATES—		—Child fourteen or older employed for support of himself, etc.....	82
See <i>Barber Board; Examining Board for Miners; Plumbers, Examination and Certification; Workmen's Compensation Act.</i>		—Child mentally or physically incapacitated	82
CHAIRS—		—Children between eight and fifteen to be sent to school.....	82
Employers of women or girls to furnish	65	—Children having graduated from common schools exempt	82
Failure of employer to comply with act, penalty	66	—Complaint if act not complied with,	83
Penalty for failure to comply with act concerning motorman.....	506	—Duty of truant officer when child absent from school	83
Seat to be provided for use of motorman on street railway or interurban line	504	—Employment of children between ages of eight and fifteen years....	83
CHECK NUMBERS—		—Examination of child by physician,	82
See <i>Miners' Check Numbers.</i>		—Jurisdiction of juvenile court, etc....	83
CHECKS—		—Notice to parent or guardian.....	83
See <i>Wages.</i>		—Penalty for violation of act.....	83
CHECK-WEIGHMAN—		—Permit for temporary absences in extreme cases	83
See <i>Weighing of Coal at Mines.</i>		Violation of act, permitting or conniving at, penalty	78
CHIEF OF FIRE DEPARTMENT—		Wages paid to minor under contract with minor, full satisfaction.....	85
See <i>Fire Protection.</i>		Work permits—	
CHILD LABOR—		—Age of child, evidence required....	72
Age certificate for child over sixteen years of age.....	68	—Conditions to be complied with before permit issued	72
Child under eighteen not to assist in public exhibition of hypnotism, etc.,	80	—Duplicate returned to commissioner of labor with statement.....	74
Child under fourteen, when and where not to be employed	67	—Employer to return to officer on termination of employment.....	75
Child under sixteen, hours to be employed	69	—Employers required to obtain and file for children under sixteen....	70
Child under sixteen not to be employed in mine or quarry or dangerous occupation	68	—Issued on blanks furnished.....	74
Children bound out as apprentices.—See <i>Apprentices.</i>		—Judge of juvenile court authorized to issue	72
Complaint to enforce provisions of act	77	—Matters to be stated in permit.....	73
County attorney, duty of.....	77	—Notice to employer when permit revoked	76
Disposing of child for employment as acrobat, etc., penalty.....	81	—Permit a protection to employer, exception	74
Duty of factory and mine inspectors and deputies to inspect permits and examine children employed.....	77	—Returned permits to be transmitted to commissioner of labor.....	75
Employer required to obtain and keep on file work permits for children under sixteen	70	—Revocation of permit by commissioner of labor	76
Employing child as acrobat, etc., penalty	81	—Rules and regulations governing proofs of age.....	72
Federal act.—See note to ch. 8.		—School record or examination record required	72
Fourteen, child under, when and where not employed	67	—Signed by child in presence of officer	73
Minor may receive wages, full satisfaction	85	—Signed statement stating occupation	72
Minority, period in males and females, Notice, noncompliance with terms of by employer, violation of act.....	84	—Superintendent of schools, etc., authorized to issue.....	72
Notice of hours of labor, hours allowed for meals, etc.....	71	CHILDREN—	
Notice to be posted by employer of children under sixteen	71	See <i>Child Labor.</i>	
Penalty for employing child in violation of act.....	78	CITIES—	
Public exhibition of hypnotism, etc., permitting child to assist, penalty..	80	Civil service.—See <i>Civil Service.</i>	
Repeal of acts in conflict with child-labor act	79	Unlawful assemblies—	
Rules and regulations governing proofs of age	72	—Cities and towns liable for action of mobs	520
		—Evidence in mitigation of damages in actions under act.....	521
		—Loss of property or injury to life or limb	520
		Vagrancy—	
		—Cities of first class, punishment of vagrants, etc.	522

INDEX.

CITIES—continued:	section	CIVIL-SERVICE—continued:	section
—Cities of second class, punishment of vagrants, etc.	523	—Officers in service of city prior to taking effect of act.	128
—Cities of third class, punishment of vagrants, etc.	524	—Persons holding office or employment when act took effect, proviso, 133	
See, also, <i>Vagrancy.</i>		—Political faith of members of commission	116
CITY ATTORNEYS—		—Publication of rules and regulations, 127	
Truancy act, duty to prosecute complaints	83	—Qualifications of commissioners.	117
CIVIL SERVICE—		—Questions which shall not be asked, 129	
Cities, first class—		—Quorum of commission	117
—Annual report to city commission.	114	—Reappointment of officer on expiration of term	120
—Appeal to commission by person removed	114	—Reappointment when position abolished and recreated	123
—Appointment of civil service commissioners	114	—Removal of commissioners.	117
—Certification of applicants.	114	—Removal of persons subject to civil-service examination	126
—Cities to which act shall not apply, 115		—Reports of civil-service commission, 127	
—Hearing by commission on appeal.	114	—Rules and regulations for conduct of business	127
—Meetings and examinations.	114	—Salary of members of civil-service commission	131
—Oath to be taken by commissioners, 114		—Sex disregarded in making certification, exception	124
—Officers and employees to whom act shall apply	114	—Suspension pending hearing for removal of appointee	126
—Qualifications of commissioners.	114	—Temporary appointments, when made, how long in force.	125
—Removal of commissioners.	114	—Term of office of commissioners.	116
—Removal of persons subject to civil-service examinations	114	—Term of office of employees and officers, etc.	123
—Rules and regulations of city commission	114	—Vacancies, how filled.	117
—Vacancies in office of commissioners, how filled	114	—Witnesses, district court compel attendance	126
—Violation of provisions of act, misdemeanor, penalty	114	See, also, <i>Civil-service Commission.</i>	
Cities of over 75,000—		CIVIL-SERVICE COMMISSION—	
—Appointment of civil-service commissioners	116	Annual report to the governor.	104
—Appointment of members of commission	117	Answer of person removed.	102
—Appointments from list certified by civil-service commission	122	Applicant, commission may refuse to certify	93
—Attendance of witnesses, etc.	126	Applicant not to pay or promise to pay money, etc., for political purpose, etc.	103
—Certification of police officers.	122	Applications for test	95
—City commissioners to supply suitable rooms and equipment.	118	Appointing officer, etc., to notify commission of positions to be filled.	100
—Clerks, etc., for commission.	132	Appointment of commissioners.	86
—Commission may revoke, modify or affirm order appealed from.	126	Appointment of one of persons certified by commission.	100
—Commissioner not to be a candidate for office.	117	Appointment on probation.	100
—Commissioner of city department to notify civil-service commission of vacancy	121	Appointments in exempt service made without test	88
—Commissioners appointed under other act	116	Appointments to be made in accordance with act.	89
—Date when act took effect.	133	Approval of removal.	103
—Discharge of police officers.	120	Basis of promotion.	97
—Eligible list, names to be certified from	122	Blood or marriage, persons related by, to officers, etc., not to be appointed, 112	
—Examinations, control of, rules, etc., 129		Campaign fund, unlawful for officer, employee or appointee to contribute to	111
—Examinations, how conducted.	130	Certified copies of rules and changes deposited with secretary of state.	91
—Examinations to be held by civil-service commission	120	Chief examiner, duties, etc.	105
—Examiners, qualifications, compensation, etc.	130	Civil service divided into classes.	87
—Hearing before civil-service commission	126	Classification of all offices, etc., by commission	89
—Name may be stricken when applicant not appointed in one year.	123	Classified service	89
—Names on list because term of office expired not to be stricken.	123	Commissioners, appointment, term of office, qualifications, etc.	86
—Names to be certified to fill vacancy, 122		Commissioners constitute civil-service commission	86
—Notice of vacancy to be filled.	121	Control of tests.	94
—Oath to be taken by civil-service commissioner	119	Deposit of fund derived from fees.	95
—Officers and employees subject to examination and certification.	128	Discharge of candidate at expiration of period of probation.	100
—Officers, assistants and clerks subordinate to civil-service commission, 132		Emergency lists, appointments from.	93

INDEX.

CIVIL-SERVICE COMMISSION—cont.: section	CIVIL-SERVICE COMMISSION—cont.: section
Examination or test, when to be held by commission	Register or eligible list to be prepared for each grade, etc.
Examiners, report to commission. . . .	Relatives of persons specified not to be appointed
Exemption from test of certain offices or positions	Removal of officer or employee in classified service
Exemptions not to be made after six months, without hearing, etc.	Repeal of acts in conflict with civil-service act
Expenditure for travel, printing, etc. .	Roster of persons in classified service to be kept.
Expiration of term, certificate to officer having appointing power.	Rules and changes to be printed for distribution
Fee may be required of applicant, use of fund	Rules to be made by commission. . . .
Files and records open to inspection. .	Rules, when to take effect.
Forfeiture of office for violation of provisions of act.	Secretary of commission, duties, etc. .
Grounds for refusal to certify applicant	Soldiers, old, preference law not repealed or limited
Inmates of institution may be assigned to duties without test.	Special information not to be furnished to any person.
Investigation within thirty days before expiration of term.	Special reports to the governor.
Investigations and hearings by commission	Suspension of attendant at any state charitable institution, reinstatement. .
Investigations by commission, witnesses, books, etc.	Temporary appointments
Justification of mere technical violation of act.	Term of office of appointive state officers
Marriage, persons related by, to officers, etc., not to be appointed. . . .	Test, false report, etc., not to be made. .
Name stricken from register when certified three times.	Test of applicants for office or employment
Names remaining on eligible list more than two years may be stricken. . . .	Test, persons not to defeat, etc.
Nature of tests.	Unclassified service, classes included. .
Noncompetitive test, officers of which required	Unclassified service not subject to provisions of act
Notice of places where rules may be obtained	Vacancies on commission, how filled. .
Notice of tests, publication, posting. .	Vacancy, appointing officer, etc., to notify commission
Notice of time, place, and scope of tests and promotion tests.	Vacancy, commission to certify list of candidates
Notice to commission of appointments, transfers, vacancies, etc.	Violation of act, forfeiture of office. . .
Office or position not exempt unless specifically named	See, also, <i>Civil Service</i> .
Officers of commission.	CIVIL-SERVICE EXAMINATIONS—
Officers or employees of which noncompetitive test may be required. . . .	See <i>Civil Service; Civil-Service Commission</i> .
Offices created, abolished, etc., notice to commission	CLEARANCE—
Old soldiers' preference law not repealed or limited.	See <i>Overhead Structures</i> .
Political campaign, unlawful for officer, appointee, etc., to take part. .	COAL-DRILLINGS—
Political contributions, etc., not to be solicited from member of classified civil service	Coal-drillings not to be used for tampering shots
Promotions, appointment made from list submitted	Drillings to be removed from mouth of drill-hole before shot fired.
Promotions, commission to provide for, Public buildings, room or offices to be furnished for tests.	Penalty for failure to comply with provisions of act
Purpose of act.	COAL DUST, ETC.—
Quarters to be provided by executive council	Coal-drillings not to be used for tampering shots
Questions not to relate to political or religious opinions, etc.	Drillings to be removed from mouth of drill-hole before shot fired.
Quorum of commissioners.	Duty of mine boss, etc., in charge of mine where coal dust, etc., accumulate
Rank of candidates on register.	Mine inspector and deputies to enforce preventive measures against accumulation of coal dust, etc.
Rating or grading to be verified by commission	Mine to be sprinkled or saturated, etc
Rating, person may retain, or enter test for new rating.	Penalty for failure to comply with provisions concerning drillings. . . .
Reappointment of officer.	Penalty for failure to sprinkle or remove coal dust, etc.
Reasons for removal to be given in writing	Removal of coal dust, etc., where impracticable to overcome by sprinkling
Recommendation, etc., applicant not to receive for political service, etc. .	Repeal of acts in conflict with this act. .
	Shots not to be fired when dust accumulated so as to make it dangerous. .
	Sprinkling of air-courses, entries, rooms, etc.

INDEX.

COAL MINES—

section

Abandonment of coal mine to be reported to inspector 331

Accidents—

—Accident-reporting act, applicability to coal mines 14

—Attendance of witnesses 339

—Costs of investigation 339

—Duty of inspector to investigate 339

—Investigation by inspector, when coroner does not investigate 339

—Notice to coroner, when any person killed 339

—Notice to mine inspector when loss of life or serious accident results 339

Action to enjoin mine inspector from enforcing order 356

Acts of miner, etc., which endanger lives, machinery, etc., penalty 295

“Agent,” defined 341

Air current to be measured by mining boss, report to inspector 335

Air-ways to be provided 334

Air-ways.—See *Ventilation of Coal Mines*.

Application of penalties recovered 340

Assistant mine foremen to be examined and certified before employment 320

Bath-houses.—See *Bath-houses at Coal Mines*.

Black powder, use in coal mines—

—Amount sent in for distribution to miners 294

—Delivery to miner 302

—Insulation of car hauled by electric motor used in delivering powder 305

—Manner and place of keeping 294

—Manner of opening original package, unsealing seal 303

—Penalty for delivering in electric car without insulation, etc 306

—Penalty for opening can with pick, etc 307

—Penalty for selling powder otherwise than as provided in act 306

—Penalty for violation of act concerning distribution, etc 294

—Pick or other metal not to be used in opening can containing powder, etc 304

—Pit bosses, etc., to see that act complied with 294

—Unlawful to convey, etc., into mine except as provided in act 304

—Unlawful to have more than twenty-five pounds 294

—Unlawful to sell, etc., except in original twenty-five pound packages 302

Blanks for reports to be furnished by inspector 354

Boreholes, distance to be kept in advance 335

Boreholes on sides in certain cases 335

Break-throughs in coal mines—

—Area of air-courses 344

—Compensation for making break-throughs, as between employer and employee 344

—Distance between break-throughs 343

—Filling of break-throughs as other break-throughs are made 344

—Operations to cease until break-throughs perfected 344

—Penalty for failure to comply with act 358

—Repair of break-throughs partly open or torn down 344

COAL MINES—continued:

section

—Required in mines operated by system of room and pillar 343

—Width and height of break-throughs 344

Case-line, etc., duty of owner where natural strata not safe 347

Certificates, employment of persons without, in emergency 326

Certification of miners.—See *Examining Board for Miners*.

Check numbers—

—Fraudulent use of numbers prohibited 329

—Penalty for violation of provisions of act 330

—Unlawful to change, exchange, substitute, alter, or remove 329

—Unlawful to place number on car with intent to defraud 329

Condemnation of land by state penitentiary 144

Convict labor.—See *Convict Labor*.

Death, right of action when health-and-safety act violated 337

Doors in mines generating explosive gases 335

Double entries—

—Application of act to mines already in operation under single-entry plan, 371

—Cross-cuts, intervals at which made, 371

—Inspector to give notice to owner, etc., to comply with provisions of act 372

—Manner of prosecuting work in mine, 371

—Owner, etc., given thirty days to comply with act 372

—Penalty for failure of owner, etc., to comply with provisions of act 373

—Requirements concerning cross-cuts, 371

—Room-and-pillar plan, act applicable to mines operated on system of 371

—Separate offense, every day mine so operated after first conviction 373

Duty of mine boss to call attention of miners to provisions of health-and-safety act 357

Dynamite, etc., use in coal mines—

—Approval of rules and regulations by inspector 303

—Penalty for failure to remove smoke, gases, etc 311

—Penalty for unlawful use 310

—Removal of smoke, gases, etc., from mine 309

—Rules, etc., to be in writing 303

—Unlawful to direct employees to go into mine until smoke, etc., removed 309

—Unlawful to use in mine except as provided in act 303

—Use under rules and regulations agreed upon 303

Empty cage to be given to every six employees ready to ascend 343

Escape-shafts.—See *Escape-shafts in Coal Mines*.

Examination of mines generating fire-damp 346

Examining board.—See *Examining Board for Miners*.

Explosion in mine, investigation, etc., 339

Explosives.—See *Explosives*.

Fences about machinery and entrance to abandoned shaft or slope 336

Fences around top of shaft and landing 336

Fences, gates or bars to be kept closed 336

INDEX.

COAL MINES—continued:	section
Fire bosses to be examined and certified before employment.....	320
Fire damp—	
—Examination of mines every morning	346
—Fire-damp to be diluted and rendered harmless	346
—Miners to be notified in case of danger	346
—Mines generating fire-damp to be kept free of standing gas.....	346
—Record of inspection to be made by examiner	346
Furnace ventilation	332
Gas men to be examined and certified before employment	320
Hoisting, duty of foreman, cager, etc., in charge of bottom of shaft.....	348
Hoisting engineers to be examined and certified before employment....	320
Hoisting, means required where stairways not constructed.....	347
Hoisting persons, regulations concerning	332
Injury, etc., action when health-and-safety act violated.....	337
Inside overseer to be employed, called "mining boss"	335
Inspection of mine every morning....	334
Inspection of steam boilers, report to mine inspector	333
Inspector may increase amount of air when necessary	334
Inspector of mines.—See <i>Mine Inspector</i> .	
Lard oil to be used for lighting purposes, exception	355
"Lessee," defined	341
Loss of life	339
Lowering and hoisting persons, regulations concerning	332
Manholes for places of refuge.....	335
Manholes on underground roads.....	348
Map or plan of mine—	
—Abandonment of coal mine to be reported to inspector.....	331
—Copy of map furnished to inspector, 331	
—Copy of map kept in office of coal mine	331
—Cost of map caused to be made by inspector	331
—Inspector to have map made if none furnished or map furnished is materially inaccurate	331
—Owner, agent or operator to cause map or plan of workings to be made	331
—Penalty for failure to comply with act	340
—Plan of progress of workings to be made annually	331
—Scale of map	331
Mine foremen to be examined and certified before employment.....	320
Miner doing acts which endanger lives, etc., penalty	295
Mine-rescue work.—See <i>Mine-rescue Work</i> .	
"Mining boss," duties.....	335
Notice by mine inspector of violation of act	356
Notice to miners in case of danger...	346
Openings in coal mines—	
—Construction of openings.....	332
—Number of persons permitted to work until openings constructed...	332

COAL MINES—continued:	section
—Penalty for failure to comply with provisions of act.....	340
—Regulations concerning openings..	332
"Operator," defined	341
Orders of mine inspector.—See <i>Mine Inspector</i> .	
"Owner," defined	341
Penalty for failure to comply with provisions of health-and-safety act, 340	
Penalty for violation of health-and-safety act of 1897.....	358
Pit cars, change of numbers on, penalty	329, 330
Posting of copies of health-and-safety act	357
Powers of mine inspector.—See <i>Mine Inspector</i> .	
Prop timber to be supplied.....	335
Quarterly reports to be made by coal operators to inspector of mines....	354
Quarterly statements to be made to mine inspector by coal operators....	338
Repeal of acts in conflict with health-and-safety act of 1883.....	342
Repeal of acts in conflict with health-and-safety act of 1897.....	359
Reports of coal operators, matters to be reported	354
Right of action for injury or damage from violation of health-and-safety act	337
Room-and-pillar plan—	
—Application of act to mines already in operation under single-entry plan	371
—Cross-cuts, intervals at which made, 371	
—Double entries to be driven parallel, 371	
—Inspector to give notice to owner, etc., to comply with provisions of act	372
—Manner of prosecuting work in mine	371
—Owner, etc., given thirty days to comply with act	372
—Penalty for failure of owner, etc., to comply with provisions of act... 373	
—Requirements concerning cross-cuts, 371	
—Separate offense, every day mine so operated after first conviction.... 373	
—Ventilation.—See <i>Ventilation of Coal Mines</i> .	
Safety-lamps to be furnished by owner of mine	335
Scales.—See <i>Weighing of Coal at Mines</i> .	
Security of mine or machinery, acts endangering, penalty	295
Shot-firers to be examined and certified before employment.....	320
Shot-inspectors to be examined and certified before employment.....	320
Shots, shot-firers, etc.—	
—Coal-drillings not to be used for tamping shots	384
—Coal dust accumulated so as to make it dangerous, unlawful to permit shots to be fired.....	377
—Conditions under which shots may be fired	374
—Drillings to be removed by miner from mouth of drill-hole before shot fired	384
—Employment of shot-firers to fire all shots	374
—Examination and certification of shot-firers before being employed.. 320	

INDEX.

COAL MINES—continued:	section	COAL MINES—continued:	section
—Following or dependent shots.....	378	—Number of telephones to be included in system	386
—Hole penetrating solid face.....	378	—Party line system required in all mines	387
—Limit of amount of powder to be used	378	—Penalty for giving false danger signal, tampering with appliances, etc.,	391
—Long-wall system, certain provisions not applicable to mines so operated,	379	—Penalty for neglect or refusal to obey requirements of act.....	391
—Long-wall system, shots not to be fired until mine vacated.....	379	—Penalty for neglect to equip mine with telephone system.....	392
—Mechanical shot-firing devices, persons to be out of mine.....	374	—Places where telephones shall be located in and about coal mine....	388
—Mixed powder, unlawful to use....	378	—Removal from worked-out portion of mine	389
—Penalty for failure to comply with, or for violation of, act.....	380	—Unlawful to operate mine not equipped with party line system....	387
—Penalty for failure to comply with provisions concerning drillings....	385	Travel on underground plane.....	335
—Regulations concerning preparing and firing of shots.....	378	Traveling-way in side of hoisting-shaft	336
—Sections of former act repealed by this act	381	Traveling-ways between bottom of main shaft and escapement-shaft... 347	
—Separate offense, each day's violation or failure to comply.....	380	Ventilation, ample means to be maintained for	334
—Shot in body of coal, etc., already loosened	378	Ventilation.—See <i>Ventilation of Coal Mines.</i>	
—Shots in sinking and developing mine	374	Violation of health-and-safety acts, penalty	340, 358
—Shots in strip mine.....	374	Weighting of coal at the mine.—See <i>Weighting of Coal at Mines.</i>	
—Strip mine, certain provisions not applicable to	378	Workmen's compensation act, all mines within provisions	563
—Strip mine, unlawful to permit firing when person close enough to be injured	375	See, also, <i>Workmen's Compensation Act.</i>	
—Tamping or stemming of shot-hole,	378	COAL OPERATORS—	
—Two shot-firers required except in strip mines	376	“Operator,” defined	341
—Unlawful to permit shots to be fired except as provided.....	374	Quarterly reports to be made to inspector of mines.....	354
—Unlawful to permit shots to be fired unless two shot-firers in mine....	376	Quarterly statements to be made to mine inspector	338
Signalling, means of.....	335	Reports of coal operators, matters to be reported	354
Speaking tubes and means of signalling	332	See, also, <i>Coal Mines.</i>	
Sprinkling and removal of dust—		COLUMBUS DAY—	
—Duty of mine boss, etc., in charge of mine where coal dust, etc., accumulate	382	Commercial paper, etc., not to be affected	232
—Mine inspector and deputies to enforce preventive measures against accumulation of coal dust, etc.....	382	Legal holiday	232
—Mine to be sprinkled or saturated, etc.	352	COMBUSTIBLE MATTER—	
—Penalty for failure to sprinkle or remove coal dust, etc.....	383	See <i>Coal Dust, etc.; Coal Mines; Ventilation of Coal Mines.</i>	
—Removal of coal dust, etc., where impracticable to overcome by sprinkling	382	COMMISSIONER OF LABOR AND INDUSTRY—	
—Repeal of acts in conflict with this act	386	Appointees of commissioner—	
—Shots not to be fired when dust accumulated so as to make it dangerous	377	—Qualifications of inspectors, etc....	166
—Sprinkling of air-courses, entries, rooms, etc.	382	—Relatives of commissioner, etc., not to be appointed.....	166
Stairways in escapement-shafts.....	347	—Special agents and other assistants,	166
Standing water not to be allowed to accumulate	347	—Statistical clerk	166
Steam boilers to be provided with steam gauge, water gauge, and safety valve	333	—Stenographer	166
Telephones in coal mines—		—Stenographer in mining department,	168
—Danger signal or alarm, duty to give signal to others.....	390	—Term of office.....	169
—Duty of drivers, motormen, and trip-riders to notify others of danger signal	390	Appointment of commissioner.....	163
—Each day mine operated without telephone system a separate offense... 392		Bond to be given by commissioner, etc.,	170
		Books and papers of society of labor, and secretary of mine industries, turned over to commissioner.....	163
		Commissioner <i>ex officio</i> factory inspector, mine inspector and director of free employment bureau.....	165
		Compensation of special agents and other assistants	166
		Complaint against railroads violating act concerning hours of labor....	460
		Department of labor and industry created under control of commissioner	163

INDEX.

COMMISSIONER OF LABOR—cont.: section		CONSTRUCTION WORK—continued: section	
Duties of commissioner.....	172	Duty of contractor to cause defective appliances to be reconstructed, repaired, etc.....	134
Duty of commissioner to publish annual report.....	179	Duty of factory inspector or deputy when complaint made.....	134
Duty of owner of factory, etc., to comply with notice of commissioner....	174	Failure of contractor to comply with act and demands of inspector or deputy, penalty.....	135
Fees of witnesses testifying before commissioner.....	173	Insufficient staging, scaffolding, stays, etc.....	134
Information deemed confidential....	173	Liens for labor.—See <i>Liens for Labor</i> .	
Interrogatories may be submitted by commissioner, answers.....	173	Notice to contractor, etc., of insufficient or defective appliances.....	134
Investigation of complaint against railroad for violating act concerning hours of labor.....	460	Penalty for failure to comply with provisions of act.....	135
Investigations by commissioner.....	173	Use of insufficient or defective appliances in construction, repairing or painting of building, etc.....	134
Laws to be enforced by commissioner,	172	See, also, <i>Public Work; Workmen's Compensation Act</i> .	
Member of industrial welfare commission.....	235	CONTRACTOR—	
Member of mine-rescue committee....	362	See <i>Construction Work; Liens for Labor; Public Work; Workmen's Compensation Act</i> .	
Notice to commissioner when requirements concerning safeguards, etc., complied with.....	174	CONTRIBUTORY NEGLIGENCE—	
Notice to owner, etc., to provide safeguards, make alterations, etc.....	174	See <i>Damages; Workmen's Compensation Act</i> .	
Office in capitol building.....	163	CONVICT LABOR—	
Officers of state, counties, townships, and cities to furnish information to commissioner.....	176	County prisoners.—See <i>County Prisoners</i> .	
Orders and findings of commissioner to be reasonable.....	174	Highways, work upon—	
Penalty for divulging information....	173	—Additional expense of guarding, etc., paid by county or city.....	155
Penalty for failure to comply with notice of commissioner, etc.....	174	—Additional good time allowance to convicts employed, etc.....	158
Powers of commissioner, deputies, etc., to enter any factory, etc.....	174	—Convicts detailed on request of county or city authorities.....	155
Printing of annual reports of bureau,	177	—Convicts not to be employed in building bridge, etc.....	157
Prosecution of owner, etc., of factory, etc., for failure to comply with notice of commissioner.....	174	—Dangerous convicts not to be detailed.....	156
Qualifications necessary for commissioner.....	164	—Disposition of earnings of convicts,	155
Relatives of commissioner, etc., not to be appointed.....	166	—Employment of surplus convict labor on roads.....	154
Repeal of act concerning biennial report.....	180	—Good time allowance to convicts for good behavior, etc.....	158
Reports, information and matters contained in report.....	179	—Industrial undertakings at penitentiary not to be impaired.....	156
Reports, matters to be stated.....	172	—Payment of one dollar per day for each convict.....	155
Reports, size, etc.....	177	—Repeal of acts in conflict with present act.....	159
Reports to be transmitted by the governor to the legislature.....	172	—Skilled labor, convicts not employed on structure requiring.....	157
Salary of commissioner.....	168	—Use of convict labor on wagon road to Leavenworth.....	146
Term of office of commissioner.....	163	State fair grounds—	
Time for bringing actions to vacate or set aside orders of commissioner,	174	—Fair grounds which may be cared for by inmates of reformatory.....	160
Traveling expenses.....	168	—Inmates of reformatory detailed to work of caring for grounds.....	160
Witnesses, failure to appear, etc., penalty.....	173	Unlawful to allow labor for private citizens outside of grounds.....	154
Witnesses not compelled to go outside of county.....	173	Use of surplus labor on roads.....	154
See, also, <i>Department of Labor and Industry; Factory Inspector; Free Employment Bureau; Mine Inspector</i> .		Wages to convicts in state reformatory.....	151
COMPENSATION—		Within penitentiary grounds—	
See <i>Workmen's Compensation Act</i> .		—Accumulation of wages if no person dependent on convict.....	151
CONSTABLES—		—Acts repealed by Laws of 1891, ch. 152.....	147
See <i>Officers</i> .		—Bid to be accompanied by bond....	139
CONSTITUTIONAL PROVISIONS—		—Bond to secure performance of contract.....	143
See <i>Bill of Rights</i> .			
CONSTRUCTION WORK—			
Accidents.—See <i>Accidents</i> .			
Additional fine for each day work continued after notice given, etc....	135		
Complaint to state factory inspector..	134		
Defective elevator, derrick or hoist....	134		

INDEX.

CONVICT LABOR—continued:

section

—Coal for state institutions to be supplied	145
—Coal mine owned by state not to be leased	146
—Coal not to be sold on market.....	148
—Condemnation of land for coal mines	144
—Contract not let for employment outside grounds	143
—Desertion of wife, etc., warden to pay wages to wife, etc., of convict..	153
—Earnings computed monthly and placed to credit of convict.....	137
—Earnings, convicts to participate in,	136
—Earnings may be sent to family...	137
—Employment of convict labor in developing and working mine.....	146
—Employment of convicts in mining coal	144
—Execution of contracts	142
—Expenditure of earnings.....	137
—Forfeiture of earnings for violation of rules	136
—Lease land for coal mines.....	144
—Letting of contract for prison labor,	138
—Minimum price per diem for each convict	139
—Nonsupport of wife, etc., warden to pay wages to wife, etc., of convict..	153
—Opening and consideration of bids,	140
—Output of coal limited to needs of public buildings and state institutions	149
—Payment of amount due at expiration of term	137
—Period of contract.....	139
—Proceedings for condemnation of land	144
—Proposals for bids for contract....	138
—Repeal of acts in conflict with Laws of 1913, ch. 304.....	152
—Repeal of Laws of 1897, ch. 163..	150
—Sale of coal	145, 148
—Settlement of questions arising between meetings	141
—Settlement of questions arising under contracts	140
—State to retain right to control and govern prisoners	143
—Submission of questions to directors,	141
—Suits in name of board of directors,	142
—Ten-hour day on all work.....	143
—Trade to be taught to prisoners....	143
—Use of convict labor on wagon road to Leavenworth	146
—Use of wages for necessities, clothes, etc.	151
—Wages forwarded to persons dependent on convict	151
—Wages to convicts in penitentiary and reformatory	151
—Warden authorized to mine coal on state lands	144
—Work injurious to prisoners forbidden	143

CORPORATIONS—

See *Wages*.

COUNTY ATTORNEY—

Complaints to enforce child-labor act, duty to prosecute	77
Escape-shafts in coal mines, duty to prosecute under act on complaint..	315
Fire protection, duty to prosecute violations of act	212
Fire protection, prosecute complaint against officer filed by factory inspector	215

COUNTY ATTORNEY—continued:

section

Prosecution of complaint against railroad for violating act concerning hours of labor.....	460
Truancy act, duty to prosecute complaints	83

See, also, *Prosecuting Attorneys*.

COUNTY PRISONERS—

Conveyance of prisoners.....	162
County commissioners to work male prisoners	161
Credit for work performed.....	161
Eight-hour day	162
Guards to be furnished by county commissioners	162
Male prisoners to be worked on streets, highways, poor farm, etc.,	161
Materials, tools, etc., to be furnished,	162
Release of prisoners.....	161
Vagrants, regulations for working...	526

COURTS—

See *Justices of the Peace; Small Debtors' Courts*.

CROSSINGS—

See *Railroads; Street Railways and Interurban Lines*.

DAMAGES—

Coal mines—

—Action for injury or damage to person when health-and-safety act violated	337
—Failure to comply with health-and-safety act, action for damages....	337
Compensation.—See <i>Workmen's Compensation Act</i> .	

Manufacturing establishments—

—Absence of safeguards, etc., contributing to death or injury.....	289
—Action by personal representative of deceased	289
—Place of bringing action.....	289
—Proof of failure to provide safeguards	290
—Sufficient proof of cause of injury, etc.	290

Mobs, liability of cities, etc.—See *Unlawful Assemblies*.

Railroad companies—

—Action within eight months.....	435
—Damages caused by negligence, etc.,	435
—Death within eight months, notice not required	435
—Frogs, switches, etc.—See <i>Frogs, Switches and Guard-rails</i> .	
—Liable for damages to employees...	435
—Neglect, damages caused from, liability of company.....	438
—Notice in writing within eight months	435
—Person prevented from giving notice within time	435
—Persons upon whom service of notice may be made.....	436
—Proof of service of notice.....	436
—Repeal of Laws of 1905, ch. 341..	437
—Service of notice.....	436

Railroad employees—

—Amount contributed or paid to insurance, relief, etc., may be set off by carrier	464
—Contract, rule, etc., to evade act, void	464
—Contributory negligence not a bar to recovery	462
—Damages diminished in proportion to negligence of employee.....	462

INDEX.

DAMAGES—continued:

—Death of employee, liability of company	461
—Liability of railroad company to person suffering injury.....	461
—One recovery, only, for same injury.....	465
—Persons to whom company held liable	461
—Railroad violating federal or state statute, contributory negligence of employee no bar.....	462
—Repeal of acts in conflict with this act	466
—Right of action survives to personal representatives	465
—Risk of employment not assumed where company violating statute,...	463

DEATH—

Action may be brought by personal representative of deceased.....	604
Distribution of amount obtained.....	604
Ensuing from violation of health-and-safety act concerning mines, action,	337
Limit of amount of damages.....	604
Next of kin may bring action in certain cases	605
Obstructions on railroad tracks, punishment when death occasioned.....	439
Time for bringing action by personal representative	604
Widow may bring action in certain cases	604
See, also, <i>Damages; Manufacturing Establishments; Workmen's Compensation Act.</i>	

DEBTORS—

See *Liens for Labor; Small Debtors' Courts; Wages.*

DEPARTMENT OF LABOR AND

INDUSTRY—

Actions to vacate and set aside orders, etc., of commissioner.....	174
Annual reports, number of copies to be printed and distributed.....	177
Annual reports to the governor.....	172
Answers to interrogatories may be required by commissioner	173
Appointees of commissioner—	
—Assistant	166
—Chief clerk	166
—Clerk in mining department.....	168
—Control of commissioner over appointees	169
—Deputy factory inspectors, two.....	166
—Deputy mine inspectors, five.....	166
—Free employment bureau clerk.....	166
—Inspector of fire escapes and places of amusement	166
—Qualifications of inspectors, etc.....	166
—Relatives of commissioner, etc., not to be appointed.....	166
—Special agents and other assistants,	166
—Statistical clerk	166
—Stenographer	166
—Stenographer in mining department,	168
—Term of office	169
Appointment of commissioner	163
Blanks and stationery to be furnished,	177
Bond to be given by commissioner, assistant, and deputy inspectors.....	170
Books and papers of society of labor, and secretary of mine industries, turned over to commissioner.....	163
"Children," defined	175
Commissioner <i>ex officio</i> factory inspector, mine inspector and director of free employment bureau.....	165

DEPARTMENT OF LABOR—cont.: section

Commissioner member of industrial welfare commission	235
Commissioner member of mine-rescue committee	362
Commissioner of labor and industry, qualifications	164
Commissioner of labor to give information, etc., to and assist industrial welfare commission	251
Commissioner to publish annual report	179
Compensation of special agents and other assistants	166
Conditions injurious or dangerous to employees, etc., proceedings.....	174
Continuing dangerous method of operating machine after notice, penalty,	174
Creation of department under control of commissioner of labor and industry	163
Director of free employment bureau, commissioner <i>ex officio</i>	165
Duties of commissioner	172
Duty of owner of factory, etc., to comply with notice of commissioner,	174
"Factory," defined	175
Fees of witnesses testifying before commissioner	173
Information deemed confidential.....	173
Injurious operation of machine, etc., penalty	174
Inspectors to give information, etc., to, and assist industrial welfare commission	251
Interrogatories may be submitted by commissioner, answers	173
Investigations by commissioner.....	173
Laws to be enforced by commissioner,	172
Manual labor in private house, etc.....	175
Meaning of expressions used in act.....	175
Mining inspector, person interested in coal mine not to be appointed.....	166
"Minor," defined	175
Notice to commissioner when requirements concerning safeguards, etc., complied with	174
Notice to owner, etc., to provide safeguards, make alterations, etc.....	174
Office in capitol building	163
Officers of state, counties, townships, and cities to furnish information to commissioner	176
Orders and findings of commissioner to be reasonable	174
Penalty for divulging information.....	173
Penalty for failure to comply with notice of commissioner, etc.....	174
"Person," defined	175
Power of commissioner, deputies, etc., to enter any factory, etc.....	174
Printing of annual reports of bureau,	177
Prosecution of owner, etc., of factory, etc., for failure to comply with notice of commissioner	174
Qualifications necessary for commissioner of labor and industry.....	164
Relatives of commissioner, etc., not to be appointed	166
Repeal of act concerning biennial report	180
Repeal of acts inconsistent with Laws of 1913, ch. 217.....	171
Reports, information and matter contained in report	179
Reports, matters to be stated.....	172
Reports, size, etc.	177

INDEX.

DEPARTMENT OF LABOR— <i>cont.</i> :	<i>section</i>	DISCHARGE—	<i>section</i>
Reports to be transmitted by the governor to the legislature.....	172	See <i>Wages</i> .	
Safeguards, employee operating machine without having in place, penalty	174	DISCHARGED PRISONERS—	
Safeguards, removal for repairs, replaced before operating machine...	174	Exposing or threatening to expose to prevent from obtaining employment, etc.	419
Salaries—		Extorting money, etc., by exposing or threatening to expose, etc.....	419
—Assistant	168	Penalty for violation of act.....	419
—Chief clerk	168	DOORS IN MINES—	
—Clerk in mining department.....	168	Doors to be provided in mines generating explosive gases	335
—Commissioner of labor and industry,	168	Penalty for failure to comply with provisions of act	340
—Deputy factory inspectors	168	DOUBLE ENTRIES IN MINES—	
—Deputy mine inspectors	168	See <i>Coal Mines</i> .	
—Free employment bureau clerk....	168	DRILLINGS—	
—Inspector of fire escapes, etc.....	168	See <i>Coal-drillings</i> .	
—Statistical clerk	168	DUE BILLS—	
—Stenographer in mining department,	168	See <i>Wages</i> .	
—Stenographers	168	DYNAMITE—	
State factory inspector, commissioner <i>ex officio</i>	165	See <i>Explosives</i> .	
State mine inspector, commissioner <i>ex officio</i>	165	EARNINGS—	
State secretary of mine industries, functions to cease	163	See <i>Wages; Workmen's Compensation Act</i> .	
State society of labor and industry, functions of secretary to cease....	163	EIGHT-HOUR DAY—	
Term of office of appointees of commissioners	169	See <i>County Prisoners; Lead and Zinc Mines; Public Work</i> .	
Term of office of commissioner.....	163	ELECTIONS—	
Time for bringing actions to vacate or set aside orders of commissioner,	174	Application of employee for time to vote	181
Traveling expenses	168	Attempting to influence vote of employee, penalty	181
Witnesses, failure to appear, etc., penalty	173	Conveyance of voters, unlawful to pay for	182
Witnesses not compelled to go outside of county	173	Employees to have two hours in which to vote	181
Woman factory inspector, duties, qualifications	167	Hours of voting at all elections....	185
Woman to be appointed as one deputy factory inspector	167	Hours of voting in cities of first and second classes	185
"Women," defined	175	Penalty for conveying voters to polls, etc.	184
"Workshop," defined	175	Penalty for refusing to employee time to vote	181
See, also, <i>Factory Inspector; Free Employment Bureaus and Agencies; Mine Inspector</i> .		Unlawful to accept employment to convey voters to polls, etc.....	183
DEPUTY SHERIFFS—		ELECTRIC WIRING—	
See <i>Officers</i> .		See <i>Fire Protection</i> .	
DEBBICK—		ELECTRICAL WORK—	
See <i>Construction Work</i> .		See <i>Workmen's Compensation Act</i> .	
DETECTIVES—		ELEVATORS—	
Governor may appoint nonresident to serve warrant issued on requisition,	414	See <i>Accidents; Construction Work; Manufacturing Establishments</i> .	
Nonresidents not to be appointed special deputies, marshals or policemen,	411	EMPLOYMENT BUREAU—	
Penalty for exercising functions of officer without authority	413	See <i>Free Employment Bureau and Agencies</i> .	
Penalty for person holding himself out as deputy sheriff, etc., without authority	413	EMPLOYMENT OFFICES AND AGENCIES—	
Penalty for violation of provision concerning importation of private detectives	414	Action on bond by director.....	189
Person, officer, etc., employing private detectives guilty of felony.....	414	Amount of fee that may be charged by licensed agency	192
Separate offense for each day private armed detective forces employed....	414	Bond required with each application for license, amount and conditions,	188
Unlawful to import person, etc., for discharging duties devolving on sheriffs, etc.	412	Commencement of action on bond by director	189
DETOURED TRAINS—		Date of termination of license.....	187
Penalty for violation of act.....	478	Director of state free employment bureau, license to be obtained from..	186
Pilot to be furnished for train detoured over other railroad.....	477	Duplicate receipt to be given when fee charged	192
Qualifications of pilot	477	Duty of official to institute criminal proceedings	194
		Entries to be made in register kept by agency	191

INDEX.

EMPLOYMENT OFFICES—continued: section

False entries not to be made in register	193
False information not to be given or false promises made	193
False notices or advertisements not to be published	193
Fee for license	186
Fee that may be charged by licensed agency	192
Fee to be returned if employment not obtained in three days	192
Fees received by director become part of state general fund	196
Fractional part of year, payment for ..	187
Free employment bureaus not subject to provisions of act	197
Hearing of case on complaint to revoke license	190
License and copy of act to be posted in agency	186
License to be obtained before conducting employment office	186
Matters to be designated in license ..	186
Moneys received by director to be accounted for	196
Penalty for violation of act	195
Prosecutions, duty of officials	194
Register of agency open to inspection of director, deputies, etc.	191
Register to be kept by each agency ..	191
Revocation of license by director ..	190
Violation of act, duty of director, deputies, etc.	194
Violation of act, penalty	195
See, also, <i>Free Employment Bureau and Agencies.</i>	

ENGINEERING WORK—

See *Workmen's Compensation Act.*

ENGINEERS—

Abandoning locomotive in furtherance of combination or agreement, punishment	470
--	-----

ENTRIES IN MINES—

See *Room-and-pillar Plan of Operating Mines.*

ESCAPE-SHAFTS IN COAL MINES—

Approval by mine inspector	313
Communication between contiguous mines	313
Complaint by mine inspector when act not complied with	315
Constructed in connection with every vein or stratum worked	313
Construction of escape-shafts	314, 332
Evidence in prosecution under act ..	315
Extension of time for completion ..	316
Mines in which required	313
Number of men employed before second shaft constructed	332
Number of miners employed	313
Inspector to determine number of men to be permitted in mine before second shaft constructed	332
Penalties for failure to comply with acts	315, 340
Repeal of acts in conflict with act extending time for construction ..	317
Second escape-shaft, when required ..	313
Stagnant water not to be allowed to accumulate	314
Stairways in escape-shaft	314
Stairways, specifications	347
Time allowed for construction of escape-shafts	313
Time when work shall commence on escape-shaft	316

ESCAPE-SHAFTS IN COAL MINES—cont.: sec.

Traveling-ways between bottom of main shaft and escape-shaft	347
Traveling-ways to be kept clear of obstructions	314
See, also, <i>Openings in Coal Mines.</i>	

EXAMINATION OF AIR-WAYS, ETC.—

See *Ventilation of Coal Mines.*

EXAMINING BOARD FOR MINERS—

Act to apply only to coal mines	328
Age and qualifications required for different positions	320
Applicants to whom board shall grant certificates	321
Appointment of members of board ..	318
Assistant mine foreman not to be employed unless certified by board ..	320
Certificates, employment of persons not holding, in emergency	326
Certificates without examination to certain employees	320
Chairman to convene board	319
Coal mines, act to apply only to ..	328
Compensation of members, payment of ..	318
Consent of board to employment of persons not holding certificates in emergency	326
False representation concerning certificate, misdemeanor	322
Fee for issuance of duplicate certificate	323
Fees paid into state treasury and credited to coal mine examiners' fund ..	325
Fees to be paid by applicants for certificates	320
Fire bosses not to be employed unless certified by board	320
First-grade mine foreman's certificate, positions which may be held by holder	326
Forged certificate, attempting to secure employment by, misdemeanor ..	322
Forging, altering or counterfeiting certificate, misdemeanor	322
Gas men not to be employed unless certified by board	320
Grounds for revocation of certificate ..	324
Hearing on revocation of certificate ..	324
Hoisting engineers not to be employed unless certified by board	320
Loss or destruction of certificate	323
Mine foreman, certificates of two grades	321
Mine foreman not to be employed unless certified by board	320
Mine foreman's certificate of first grade, examination for	321
Nature of examinations	320
Notice of meeting at which applicants to be examined	319
Notice to holder of certificate before revocation	324
Organization of board	319
Penalty for violation of act by any owner, operator, etc.	327
Publication of notice of meeting at which applicants to be examined ..	319
Qualifications of applicants for examination	320
Qualifications of members of board ..	318
Reexamination of holder of canceled certificate	324
Revocation of certificate by board ..	324
Second-grade mine foreman's certificate, positions which may be held by holder	326
Secretary, selection, duties	319

INDEX.

EXAMINING BOARD FOR MINERS—cont.:		<i>sec.</i>	EXPLOSIVES—continued:		<i>section</i>
Secretary to issue duplicate certificate, proof	323		—Federal act.—See note to ch. 17.		
Shot-firers not to be employed unless certified by board.....	320		—Intoxicated or irresponsible person not to receive explosives.....	199	
Shot-inspectors not to be employed unless certified by board.....	320		—Magazine or storage house location.	201	
Term of office of members of board...	318		—Negligent handling or exposing of explosives	199	
Violation of act, penalty.....	327		—Nitroglycerine, storing, etc.....	201	
Written charges for revocation of certificate	324		—Penalties for violation of act.....	203	
EXAMINING BOARD FOR PLUMBERS—			—Possession of explosives without having executed receipt, violation of act	200	
See <i>Plumbers, Examination and Certification.</i>			—Quantity of explosives, location of magazine, etc.	201	
EXECUTIONS—			—Record of sale, etc., to be kept....	198	
See <i>Small Debtors' Courts; Wages; Workmen's Compensation Act.</i>			—Record open to inspection of certain officers	198	
EXEMPTIONS—			—Record to be preserved one year....	198	
Claim under workmen's compensation act exempt	570		—Record to be signed by person, etc., receiving explosives	198	
See, also, <i>Wages.</i>			See, also, <i>Coal Dust, etc.; Ventilation of Coal Mines.</i>		
EXHIBITIONS—			EX-SOLDIERS AND SAILORS—		
See <i>Child Labor.</i>			See <i>Old Soldiers' Preference Law.</i>		
EXPLOSIONS—			FACTORIES—		
See <i>Accidents; Coal Mines; Mine-rescue Work.</i>			See <i>Accidents; Department of Labor and Industry; Factory Inspector; Fire Protection; Manufacturing Establishments; Workmen's Compensation Act.</i>		
EXPLOSIVE GASES—			FACTORY ACT—		
See <i>Ventilation of Coal Mines.</i>			See <i>Manufacturing Establishments.</i>		
EXPLOSIVES—			FACTORY INSPECTOR—		
Black powder, use in coal mines—			Accidents, duty to investigate and make recommendations	11	
—Amount sent in for distribution to miners	294		Accidents reported to inspector.....	11	
—Delivery to miner.....	302		Annual report to include report of accidents and recommendations....	12	
—Insulation of car hauled by electric motor used in delivering powder...	305		Appointment of deputy inspectors, two,	166	
—Manner and place of keeping.....	294		Child labor, duty to inspect work permits and examine children employed	77	
—Opening of original package, unsealing seal	303		Commissioner of labor and industry <i>ex officio</i> inspector.....	165	
—Penalty for delivering in electric car without insulation, etc.....	306		Complaint filed with county attorney when officer fails to comply with fire-protection act	215	
—Penalty for opening can with pick, etc.	307		Complaint on failure of officer to comply with fire-protection act....	215	
—Penalty for selling powder otherwise than provided in act.....	306		Complaint to inspector of insufficient or defective appliances in construction work	134	
—Penalty for violation of act concerning distribution, etc.....	294		Complaint when child-labor law violated	77	
—Pick or other metal not to be used in opening can containing powder..	304		Deputies to give bond.....	170	
—Pit bosses, etc., to see that act complied with	294		Deputies to inspect work permits and examine children employed.....	77	
—Unlawful to convey, etc., into coal mine except as provided in act....	304		Inquest, inspector or deputy may attend	11	
—Unlawful to have more than twenty-five pounds	294		Inspection of appliances complained of in construction work.....	134	
—Unlawful to sell, etc., except in original twenty-five-pound packages,	302		Inspection of buildings mentioned in fire-protection act	214	
Dynamite, etc., use in coal mines—			Inspector or deputies empowered to require changes for fire protection..	214	
—Approval of rules and regulations by inspector	308		Notice to contractor of defective or insufficient appliances	134	
—Penalty for failure to remove smoke, gases, etc.	311		Salary of deputy factory inspectors..	168	
—Penalty for unlawful use.....	310		State superintendent of inspection, <i>ex officio</i>	213	
—Removal of smoke, gases, etc., from mine	309		Traveling expenses	168	
—Rules, etc., to be in writing.....	308		Woman appointed as one deputy....	167	
—Unlawful to direct employees to go into mine until smoke, etc., removed,	309		Woman inspector, duties, qualifications	167	
—Unlawful to use in mine except as provided in act.....	308		See, also, <i>Department of Labor and Industry.</i>		
—Use under rules and regulations agreed upon	308				
Storage, handling and disposition—					
—Act not to apply to black or blasting and gunpowder	198				
—Carrying of explosives concealed on the person, prohibited.....	202				

INDEX.

FAIR GROUNDS—	section	FIRE PROTECTION—continued:	section
Inmates of reformatory detailed to care for grounds.....	160	Public halls, theaters, etc., to be provided with stairways, hallways, etc., 207	
FELLOW-SERVANT DOCTRINE—		Regulations concerning doors, exits, etc., in theaters, halls, etc.....	207
See <i>Workmen's Compensation Act.</i>		Repeal of Laws of 1909, ch. 149, etc.....	218
FENCES AT COAL MINES—		Report of chief of fire department to state factory inspector, time of making, etc.....	213
Abandoned shaft or slope, fences to be maintained about entrance.....	336	Semiannual report by chief of fire department to state factory inspector.....	213
Fences to be maintained about machinery at mines.....	336	Stand-pipe and hose substituted for fire-extinguishers.....	211
Gates or bars to be kept closed.....	336	State factory inspector <i>ex officio</i> state superintendent of inspection.....	213
Maintained around top of shaft and landing.....	336	State superintendent of inspection, decision of disputed matters.....	205
Penalty for failure to comply with provisions of act.....	340	State superintendent of inspection, state factory inspector <i>ex officio</i>	213
FIRE-DAMP—		Unlawful to operate theater, etc., without proper ventilation.....	208
See <i>Ventilation of Coal Mines.</i>		Ventilation, artificial, required in certain buildings.....	209
FIRE-ESCAPES—		Ventilation required in theaters, picture shows, etc.....	208
See <i>Fire Protection; Manufacturing Establishments.</i>		Violation of act by officer, penalty... 217	
FIRE-EXTINGUISHERS—		Violations reported to county attorney, 212	
See <i>Fire Protection.</i>		See, also, <i>Manufacturing Establishments.</i>	
FIRE PROTECTION—		FLAGMEN, ETC., ON RAILROADS—	
Artificial ventilation for certain buildings.....	209	Accident occurring by failure, refusal or neglect of flagman, etc., punishment.....	446
Booths for moving-picture machines.....	209	Flagman to be stationed regardless of automatic signals, etc.....	444
Chemical fire-extinguisher or extinguishers on each floor of building.....	211	Penalty for failure of flagman, etc., to perform duty.....	446
Chief of fire department, etc., to make inspections and report violations... 212		Penalty for violation of act.....	445
Chief of fire department failing to perform duty, penalty.....	217	Stationed to protect trains, etc., obstructing main tracks.....	443
Chief of fire department to make semiannual report.....	213	Street railway crossing railway tracks, 482	
Complaint against officer filed by factory inspector with county attorney, 215		Visible and audible signals, flagman to have.....	444
Complaint to factory inspector on failure of officer to comply with act... 215			
Electric wiring.....	209	FREE EMPLOYMENT BUREAU AND AGENCIES—	
Factory inspector and deputies empowered to require changes, etc.... 214		Agencies not subject to act concerning licensed agencies.....	197
Fire-escapes—		Allowance for postage and express... 227	
—Buildings having cement walls, etc., 205		Annual report of director.....	223
—Buildings on which to be provided, 205		Appointment and compensation of director.....	219
—Disputed matters submitted to state superintendent of inspection.....	205	Appointment of free employment bureau clerk.....	166
—Elevators and warehouses.....	205	Cities, free agencies in cities of first and second class.....	219
—Fire-proof roofs.....	205	City clerk, duties devolve upon, when no other agency established.....	221
—Judgment of fire marshal and state superintendent of inspection final... 205		City of second class may dispense with agency.....	219
—Number, location, material, etc.... 205		Commissioner of labor and industry <i>ex officio</i> director.....	165
Fire-extinguishers and stand-pipe may both be required.....	211	Compensation of director of free employment.....	227
Inspection by local officers.....	210	Director to keep and maintain an office.....	225
Inspection, liability of city for failure to enforce.....	216	Director to prepare rules and regulations, forms, etc.....	220
Inspection of buildings by state factory inspector and deputies.....	214	Duties of free employment agent.....	222
Inspection, state factory inspector <i>ex officio</i> state superintendent of.....	213	Establishment of agencies by mayor and council of cities.....	221
Investigation by factory inspector on complaint.....	215	Executive council to provide room, etc., for director.....	225
Liability of municipality for failure to enforce police inspection.....	216	Free employment bureau created.....	219
Liability of owner, lessee, etc., failing to comply with act.....	216	Harvest hands, purpose of making list.....	226
Local officer to make inspections and report violations.....	212		
Local officers to require compliance with act.....	210		
Notices designating places where fire-escapes found.....	206		
Officer failing to comply with act, penalty.....	217		
Penalty for failure to comply with act, 216			

INDEX.

FREE EMPLOYMENT BUREAU—cont.: section	
List of number of extra harvest hands to be prepared by director.....	226
Notification by director where employment may be had.....	223
Notification to persons registered of employment open.....	222
Printing of blanks, forms, blank books, etc.....	220
Registration of persons desiring employment.....	222
Registration of persons desiring to employ any person.....	222
Removal of agent appointed by city to conduct free employment agency....	224
Removal of city clerk as free employment officer.....	224
Reports of agencies made to director of free employment.....	223
Reports to director of free employment.....	222
Salary of free employment bureau clerk.....	168
Traveling expenses.....	168
Vacancy in office of free employment agent, how filled.....	224
FREE PASSES, ETC., ON RAILROADS—	
"Employee," persons included, persons excluded.....	449
Epidemic, pestilence or catastrophe, passes, etc., not prohibited when necessary, etc.....	451
Excursion rates not prohibited.....	452
"Family," persons included, others excluded.....	450
Local attorney, physician and surgeon excepted.....	449
Militia, act not to affect rate for....	452
Penalty for issuing, giving, etc., to persons not authorized to accept and use same.....	448
Penalty for soliciting, accepting or using by persons not authorized.....	448
Punishment of persons violating act.....	453
Reduced fare to ministers of the gospel, etc., not prohibited.....	452
Repeal of acts in conflict with anti-pass act.....	454
Unlawful for persons not specified to solicit, accept, or use free pass, etc.,	447
Unlawful for railroad company to issue, give, etc., except to persons specified.....	447
Violation of act by device, subterfuge or arrangement, punishment.....	453
FREE SPEECH—	
See <i>Bill of Rights</i> .	
FREIGHT TRAINS CARRYING PASSENGERS—	
Act not applicable to certain trains loaded with live stock.....	474
Caboose need not be stopped at depot,	474
Company liable only for gross negligence.....	474
Officer or employee of company violating act guilty of misdemeanor.....	475
Penalty for violation of act.....	475
Repeal of Laws of 1907, ch. 274....	476
Stopping to receive or discharge passengers.....	474
Trains to which caboose attached obliged to transport passengers....	474
Transportation of children.....	474
FROGS, SWITCHES AND GUARD-RAILS—	
Accidental injury to be guarded against by filling, blocking and guarding.....	455

FROGS, SWITCHES AND GUARD RAILS—	
<i>continued: section</i>	
Liability of company to person injured.....	456
Penalty for violation of act.....	456
Separate offense each thirty days act not complied with.....	456
FURNACES—	
See <i>Ventilation of Coal Mines</i> .	
GARAGE—	
Lien of keeper for labor.....	264-266
See, also, <i>Liens for Labor</i> .	
GARNISHMENT—	
See <i>Wages</i> .	
GAS—	
See <i>Ventilation of Coal Mines</i> .	
GIRLS—	
Employers to furnish chairs, stools, etc.....	65
Failure of employer to furnish chairs, stools, etc., penalty.....	65
See, also, <i>Industrial Welfare Commission</i> .	
GUARD-RAILS—	
See <i>Frogs, Switches and Guard-rails; Manufacturing Establishments</i> .	
HAND-RAILS—	
See <i>Manufacturing Establishments</i> .	
HARVEST HANDS—	
See <i>Free Employment Bureau and Agencies</i> .	
HEADLIGHTS ON LOCOMOTIVES—	
Act not to apply to certain engines....	457
Conditions under which visibility measured.....	457
Locomotive engines to be equipped with headlights.....	457
Operation of engine for part of day in violation of act complete misdemeanor.....	458
Penalty for violation of act.....	458
Power of headlight required.....	457
HIGHWAYS—	
See <i>Convict Labor; County Prisoners; Public Work</i> .	
HOISTING AT MINES—	
Duty of foreman, cager, etc., in charge of bottom of shaft.....	348
Empty cage to be given to every six employees ready to ascend.....	349
Means to be kept ready where stairways not constructed.....	347
Penalty for failure to comply with provisions of act.....	358
HOISTING SHAFTS—	
See <i>Manufacturing Establishments</i> .	
HOISTS—	
See <i>Construction Work</i> .	
HOLIDAYS—	
Columbus day a legal holiday.....	232
Columbus day not to affect commercial paper, etc.....	232
Holidays specified in negotiable-instruments act.—See note to ch. 20.	
Labor day a legal holiday.....	229
Lincoln's birthday a legal holiday....	231
Memorial day a legal holiday.....	228
Washington's birthday a legal holiday,	230
HORSESHOER—	
Lien for labor.....	264-266
See, also, <i>Liens for Labor</i> .	

INDEX.

HOURS OF LABOR—

	section
Convict labor, ten-hour day.....	143
County prisoners, eight-hour day.....	162
Eight-hour day.—See <i>Lead and Zinc Mines; Public Work.</i>	

Railroads—

—Act not applicable to employees of sleeping-car companies, etc.....	459
—Actions brought against company violating act by attorney-general or prosecuting attorney of county....	460
—Baggagemen and express messengers not subject to act.....	459
—Cases in which act shall not apply,	459
—Complaint made to commissioner of labor	460
—Complaint to be filed by commissioner of labor	460
—Eight hours' rest required.....	459
—Federal act.—See note to ch. 36, art. 10.	
—Investigation by commissioner of labor	460
—Penalty for violation of act.....	460
—Sixteen consecutive hours on duty by persons named	459
See, also, <i>Industrial Welfare Commission.</i>	

INDUSTRIAL WELFARE COMMISSION—

Act construed as supplemental to existing laws	253
Action by employer, employee, etc., to vacate order, ruling, or holding....	246
Action of commission on report of board	242
Action to set aside order, etc., advanced over other actions.....	246
Appeal from district court in action to set aside order, etc.....	246
Appointment of members of commission	235
Attorney-general to appear for commission	246
Attorney's fee in action to recover minimum wage, overtime, etc.....	249
Biennial report to the governor....	252
Board reconvened or new board called,	243
Burden of proof in action to set aside order, ruling, etc.....	246
Commissioner of labor and two others constitute commission	235
Commissioner of labor to give information and assist in carrying out act,	251
Compensation of members of wage, hour or sanitary board.....	240
Compensation of witnesses for travel and attendance	239
Conditions of labor of women, learners and apprentices, and minors,	233, 234
Construction of act as supplemental legislation	253
Copy of order to be mailed to employers	242
Costs in action to recover minimum wage, overtime, etc.....	249
Creation of industrial welfare commission	235
Definition of terms used in act....	245
Determination of majority of board to be reported to commission.....	241
Determinations of new board, action upon	243
Different minima hours and standards for different localities.....	241
Discharge of employee for participation in investigation, penalty.....	248
Discrimination against employee for participation in investigation, penalty	248

INDUSTRIAL WELFARE COMMISSION— continued:

	section
Employees who are physically defective or crippled, etc., special license....	244
Employment of women, etc., in violation of orders, etc., penalty.....	249
Findings and report of commission..	239
Hours, employment for greater number than fixed, penalty.....	249
Hours of labor of women, learners, and apprentices, and minors.....	234
Information to be transmitted by commission to board.....	241
Inspection of employer's register by commission, etc.....	238
Inspectors of bureau of labor to give information and assist in carrying out act	251
Investigation by commission whether employers and employees complying with orders, etc.....	250
Investigation of wages, hours or labor conditions	237
Jurisdiction of commission over determination of board, etc.....	240
Members of commission to serve without pay	236
Members of wage, hour or sanitary board	240
Minimum wage, duties of board in determining	241
Minimum wage, employment of woman, or minor, learner or apprentice for less than, penalty.....	249
Minimum wage, recovery in civil action	249
Notice of public hearing on determination of board.....	242
Number of hours, duty of board in determining	241
Oaths to be administered by member of commission	239
Office of commission to be provided in state house	236
Officers and employees of commission,	235
Order made by commission effective in sixty days	242
Order of commission.....	239
Orders, etc., in effect pending appeal,	246
Overtime, etc., recovery in civil action	249
Penalty for discharge or discrimination against employee for participation in investigation.....	248
Penalty for violation of act.....	247
Police and sovereign power of state exercised	233
Posting of order of commission.....	242
Power and authority of commission in making investigation	237
Production of records, etc.....	239
Prosecution of persons not complying with orders	250
Public hearings for purpose of investigation	239
Qualifications of members of commission	235
Quorum of commission.....	235
Reasons and facts for determination to be reported to commission.....	241
Register to be kept by employers of women, learners, and apprentices, and minors	238
Relatives of persons specified not to be appointed on commission.....	235
Removal of members of commission..	235
Reopening of question of wages, hours or conditions of labor.....	243
Report to the governor, printing and distribution	252

INDEX.

INDUSTRIAL WELFARE COM.—cont.: section

Request of persons employed for investigation 237

Rules and regulations, commission to have power to make..... 245

Rules and regulations governing wage, hour or sanitary board..... 240

Sanitary conditions, duty of board in determining 241

Separate inquiry into and report on any branch of occupation..... 245

Separate order on any branch of occupation 245

Service on member of board in action to set aside order, etc..... 246

Special license to employees who are physically defective or crippled, etc. 244

Term of office of members of commission 235

Terms used in act, defined..... 245

Testimony at hearings 239

Time for bringing action to set aside order, ruling, etc..... 246

Traveling and necessary expenses of members of commission to be paid.. 236

Vacancies, how filled 235

Violation of act, misdemeanor, penalty, 247

Wage, hour or sanitary board for any occupation 240

Wages of women, learners, and apprentices, and minors..... 234

Witnesses may be subpoenaed, fees, etc. 239

Woman, one member of commission to be 235

INDUSTRY—
See *Department of Labor and Industry.*

INFANTS—
See *Minors.*

INFLAMMABLE INGREDIENTS—
See *Coal Dust, etc.; Ventilation of Coal Mines.*

INJUNCTION—
See *Injunctions in Labor Cases; Mine Inspector; Union Labels, etc.*

INJUNCTIONS IN LABOR CASES—
Acts which shall not be prohibited by restraining order or injunction.... 257

Amount and conditions of security required 255

Application, sufficiency, verification.. 257

Cases involving employers, employees or persons seeking employment.... 254

Description of act sought to be restrained, without reference to petition, etc. 256

Expiration of temporary restraining order 254

Extension of temporary restraining order 254

Injunction not to be granted unless necessary to prevent injury, etc.... 257

Notice and opportunity to be heard.. 254

Order to set forth reasons for issuance 256

Persons bound by order..... 256

Reasons for extension of temporary restraining order to be entered of record 254

Record to be made of temporary restraining order 254

Restraining order not to be granted unless necessary to prevent injury, etc. 257

INJUNCTIONS IN LABOR CASES—cont.: sec.

Security to be given before order issued 255

Service of notice and copy of pleadings 254

Temporary restraining order without notice in certain cases 254

Verification of application..... 257

See, also, *Union Labels, etc.*

INJURIES—
See *Accidents; Damages; Workmen's Compensation Act.*

INSPECTOR OF MINES—
See *Mine Inspector.*

INSURANCE—
See "Scheme of compensation, benefit or insurance," under *Workmen's Compensation Act.*

INTERURBAN LINES—
See *Street Railways and Interurban Lines.*

JOURNAL BRASS—
Employees may remove in performance of duty 468

Unlawful to remove from engine, car, motor, etc. 468

Violation of act a felony, punishment, 469

JURISDICTION—
See *Small Debtors' Courts; Justices of the Peace.*

JURY—
See *Bill of Rights.*

JUSTICES OF THE PEACE—
Concurrent jurisdiction with district court in misdemeanors..... 400

Jurisdiction in misdemeanors..... 400

Limit of fine and imprisonment in justice court 400

KANSAS CONSTITUTION—
See *Bill of Rights.*

KEEPER OF GARAGE—
Lien for labor..... 264-266

See, also, *Liens for Labor.*

LABELS—
See *Union Labels, etc.*

LABOR AND INDUSTRY—
See *Department of Labor and Industry.*

LABOR CASES—
See *Injunctions in Labor Cases.*

LABOR DAY—
Legal holiday 229

LABOR DEPARTMENT—
See *Department of Labor and Industry.*

LABOR LIENS—
See *Liens for Labor.*

LABOR ORGANIZATIONS—
Act making it unlawful to discharge employee, unconstitutional 64

Act making it unlawful to require employee to enter into agreement not to become or remain a member, unconstitutional 64

See, also, *Union Labels, etc.*

LABOR UNIONS—
See *Labor Organizations; Union Labels, etc.*

LARD OIL—
Use for lighting purposes..... 355

When other light may be used..... 355

LEAD AND ZINC MINES, EIGHT-HOUR

DAY—	<i>section</i>
Acts constituting separate offenses....	361
Basis of payment in emergencies....	360
Eight hours constitute a day's labor....	360
Emergencies, hours of labor....	360
Penalty for requiring, permitting, etc., person to work more than eight hours per day.....	361
See, also, <i>Mines.</i>	

LEARNERS AND APPRENTICES—

See *Industrial Welfare Commission.*

LEGAL HOLIDAYS—

See *Holidays.*

LIBERTY OF THE PRESS—

See *Bill of Rights.*

LIENS FOR LABOR—

Blacksmith, horseshoer, keeper of garage, etc.—	
—Lien enforced and foreclosed as chattel mortgage	266
—Lien for services and materials in making repairs, etc.....	264
—Lien of blacksmith, horseshoer, wagonmaker, keeper of garage, etc....	264
—Lien on goods, chattels, horses, mules, wagons, buggies, automobiles, farm implements, etc.....	264
—Lien to be filed for record with recorder of county.....	265
—Time for filing lien.....	265
Bond to secure claims—	
—Amount and approval of bond....	282
—Amount and conditions of bond taken by public officer.....	283
—Approval of bond taken by public officer	284
—Claimant for labor, etc., may sue on bond taken by public officer....	284
—Contract relating to public improvements in sum exceeding \$100....	283
—Discharge of liens already filed....	282
—Filed with clerk of district court..	282
—Filing of bond taken by public officer	284
—Lien not to attach if contractor or owner execute and file bond.....	282
—Liens discharged, others not to attach, when bond taken by public officer	284
—Limitation of actions on bond taken by public officer.....	284
—Public officer to take bond from contractor	283
—Suit on bond by any person interested	282
Mechanics' liens—	
—Actions to enforce liens, procedure, etc.	275
—Amendment of lien statement....	275
—Assignment of claims, record....	274
—Cancellation of liens when actions thereon barred	279
—Claimant to file statement in office of clerk of district court.....	272
—Claims for liens assignable, rights of assignee	274
—Consolidation of actions pending to enforce liens	277
—Contractor to defend action.....	276
—Costs taxed against claimant failing to establish lien.....	279
—Credit for payment to subcontractor,	273

LIENS FOR LABOR—continued: section

—Defense by owner at expense of contractor	276
—Entries to be made by clerk when statement filed	272
—Fee of clerk for entering statements,	273
—Liability of owner of land to laborer, etc.	273
—Lien enforced by civil action.....	275
—Lien of laborer, etc., time for filing statement	273
—Lien on land, building, and appurtenances	271
—Liens preferred to other liens, etc.,	271
—Lightning rods, lien not to attach to building, etc., under this act.....	281
—Limitation of actions to enforce liens	275
—Limitation of actions where promissory note given.....	275
—Note given for labor or material...	272
—Owner entitled to retain amount of claims, etc., until adjudicated....	276
—Owner may bring action to have liens adjudicated	279
—Owner may pay subcontractor....	273
—Owner not liable to action by contractor within sixty days.....	273
—Parties to actions to enforce liens,	276
—Payments to contractor within sixty days at owner's risk.....	273
—Persons entitled to liens.....	271
—Proceeds of sale distributed ratably if insufficient.....	280
—Rights of parties where property sold	278
—Sale of property where judgment rendered to enforce lien.....	278
—Service of notice on owner of land,	273
—Sheriff unable to find original contractor, proceedings	276
—Statement, matters to be set forth..	272
—Statement of lien of laborer, etc....	273
—Stay of trial to permit filing of lien statement	277
—Subcontractor, artisan or laborer entitled to lien.....	273
—Time for filing statements.....	272
Oil and gas leasehold—	
—Artisan or day laborer in employ of contractor	268
—Enforcement of lien for labor and material	269
—Lien of contractor on leasehold or pipe line for labor and material...	269
—Lien preferred to other liens.....	267
—Repeal of acts in conflict with this act	270
—Subcontractor or materialman to have lien	268
Personal property—	
—Abandonment of lien by delivery of property	263
—Certified copies of notices, etc., presumptive evidence	262
—Contents of statement.....	258
—Copies of notices, affidavit, etc., to be filed in county clerk's office....	262
—Excess of money from sale deposited with county treasurer.....	261
—Lien of mechanic, artisan or tradesman on property altered or repaired	258
—Mechanic, etc., entitled to possession if claim not paid in six months,	258
—Notice of sale of personal property,	259

INDEX.

LIENS FOR LABOR—cont.: section		MANUFACTURING ESTABLISHMENTS—cont.	
—Posting of notices when value \$20 or less	259	Mills of every kind included in provisions of act	291
—Proceeds of sale, disposition after payment of charges and expenses	261	Oil refineries included in provisions of act	291
—Publication of notice	259	"Person," as used in act, defined	292
—Sale of property after six months	258	Safety appliances and safeguards required	288
—Sale of property when statement filed, etc.	258	Smelters included in provisions of act, 291	
—Sales to be at public auction for cash	260	Stairs to be properly secured	285
—Service of notice on owner	259	Well-holes to be inclosed, etc.	285
—Statement to be filed with register of deeds when property taken away	258	See, also, <i>Fire Protection; Workmen's Compensation Act.</i>	
—Waiver of lien by special contract	263	MAP OR PLAN OF MINE—	
Railroad work—		Abandonment of coal mine to be reported to inspector	331
—Bond to be filed in each county	431	Copy of map furnished to inspector	331
—Bond to be taken from contractor for protection of laborers, etc.	431	Copy of map kept in office of coal mine	331
—Railroad liable when bond not taken, 431		Cost of map caused to be made by inspector	331
—Suit on bond, by whom brought	432	Inspector to have map made if none furnished or map furnished is materially inaccurate	331
LIGHTNING RODS—		Owner, agent or operator to cause map or plan of workings to be made	331
Lien not to attach for erection or construction	281	Penalty for failure to comply with act, 340	
LIGHTS—		Plan of progress of workings to be made annually	331
See <i>Safety Lamps; Switch Lights, etc.</i>		Scale of map	331
LIMITATION OF ACTIONS—		MARSHALS—	
See <i>Damages; Death; Department of Labor and Industry; Industrial Welfare Commission; Liens for Labor; Mine Inspector; Industrial Welfare Commission; Wages; Workmen's Compensation Act.</i>		See <i>Officers.</i>	
LINCOLN'S BIRTHDAY—		MASTERS—	
Legal holiday	231	See <i>Apprentices.</i>	
LOADERS—		MECHANICS' LIENS—	
See <i>Weighing of Coal at Mines.</i>		See <i>Liens for Labor.</i>	
LONG-WALL SYSTEM—		MEMORIAL DAY—	
See <i>Shots, Shot-firers, etc.</i>		Legal holiday	228
MANHOLES IN MINES—		MILITIA—	
Number and places at which to be provided	335	Attendance of drill, annual muster, etc., by employee	293
Penalty for failure to comply with provisions of act	340	Employer refusing permission to employee to attend drill, etc.	293
Places of refuge	335	Penalty for employer discharging or punishing employee for absence	293
Provided on roads on which persons travel underground, etc.	349	HILLS—	
MANUFACTURING ESTABLISHMENTS—		See <i>Accidents; Manufacturing Establishments.</i>	
Action for damages, etc.—		MINE EXAMINING BOARD—	
—Absence of safeguards, etc., contributing to death or injury	289	See <i>Examining Board for Miners.</i>	
—Action by personal representative of deceased	289	MINE INSPECTOR—	
—Place of bringing action	289	Abandonment of mine to be reported to inspector	331
—Proof of failure to provide safeguards	290	Accidents—	
—Sufficient proof of cause of injury, etc.	290	—Applicability of accident-reporting act	14
Belt-shifters, etc., to be supplied	288	—Attendance of witnesses	339
Cement works included in provisions of act	291	—Costs of investigation	339
Doors to open outward and not to be fastened during working hours	285	—Duty of inspector to investigate	339
Duty of owner or operator to furnish safety appliances	288	—Investigation by inspector when coroner does not investigate	339
Elevators to be inclosed, etc.	285	—Notice to coroner when any person killed	339
Fire-escapes, number and construction, 287		—Notice to mine inspector when loss of life or serious accident results	339
Hand-rails to be provided in stairways	285	Action to enjoin inspector from enforcing order	356
Hoisting-shafts to be inclosed, etc.	285	Annual report, matters contained in	338
Machine and repair shops included in provisions of act	291	Appointment of deputy mine inspectors, five	166
"Manufacturing establishments," as used in this act, defined	291	Approval of escape-shafts in coal mines	313
		Approval of rules for use of dynamite, etc.	308

INDEX.

MINE INSPECTOR—continued:	section	MINE-RESCUE WORK—continued:	section
Authority in enforcing bath-house act, 299		Assistant superintendent to train miners in mine-rescue and first-aid work	368
Blanks to be furnished for reports of coal operators, etc.	354	Assistants to have charge of station and substations	366
Child labor, duty to inspect work permits and examine children employed, 77		Assistants to report weekly to superintendent	367
Coal dust, etc., duty to enforce preventive measures against accumulation, etc.	382	Building for housing mine-rescue work	370
Coal operators, etc., to make quarterly report to inspector	354	Commissioner of labor and industry member of mine-rescue committee ..	362
Combustible matter in mines, duty to enforce preventive measures	382	Duties of superintendent and assistant superintendent	369
Commissioner of labor and industry <i>ex officio</i> inspector	165	Duty of assistants	367
Complaint when child-labor law violated	77	Erection or remodeling of buildings ..	362
Complaint when escape-shafts not constructed in coal mines	315	Examination of assistants before appointment	366
Copy of map or plan of working to be furnished to inspector	331	Examining committee	366
Deputies to give bond	170	Governor member of mine-rescue committee	362
Deputies to inspect work permits and examine children employed	77	Mine-rescue station committee, members	362
Duties of inspector	338	Plans and specifications for buildings, 363	
Examination of mines	338	Purchase of additional apparatus and equipment for mine-rescue work ..	370
Injunction, when granted	356	Purchase of location for mine-rescue station	362
Inspection of weights, measures, and scales at coal mines.—See <i>Weighting of Coal at Mines.</i>		Purchase of necessary mine-rescue and first-aid equipment and appliances ..	365
Inspector, person interested in coal mine not to be appointed	166	Purpose of mine-rescue station	369
Mining-boss to measure air current and report to inspector	335	Rescue of men from mine when notified of explosion or accident	367
Notify owners, etc., of violation of law, and penalty imposed	356	Room for assistant in charge of mine inspection	364
Number of men in coal mine before second escape-shaft constructed ..	332	Room for mine-rescue library, laboratory, and class rooms	364
Order owner, etc., to put mine in safe condition	356	Space for equipment belonging to, or provided by, United States government	364
Permission of inspector to resume work in mine	356	State architect to assist committee ..	363
Printed copies of health-and-safety act to be furnished	357	State architect to superintend erection of buildings	363
Proceedings instituted when notice disregarded	356	Substations	362
Quarterly statements to be made by coal operators	338	Superintendent of stations to supervise work of stations	367
Record of examinations of mines	338	Training of children in public and high schools	368
Report to inspector concerning steam boilers at mines	333	MINERS' CHECK NUMBERS—	
Reports of coal operators, etc., matters to be reported	354	Fraudulent use of numbers prohibited, 329	
Right to enter any coal mine	356	Penalty for violation of provisions of act	330
Salaries of clerk, and stenographer in mining department	168	Unlawful to change, exchange, substitute, alter or remove	329
Salary of deputy mine inspectors	168	Unlawful to place number on car with intent to defraud	329
Service of notice on inspector	356	MINES—	
Supervision of act concerning bath-houses at coal mines	299	Accidents—	
Suspension of work in mine, penalty for failure to obey order of inspector	356	—Applicability of accident-reporting act	14
Traveling expenses	168	—Attendance of witnesses	339
See, also, <i>Department of Labor and Industry.</i>		—Costs of investigation	339
MINE-RESCUE WORK—		—Duty of inspector to investigate ..	339
Accommodations for officers and employees in buildings	364	—Investigation by inspector when coroner does not investigate	339
Approval of plans, etc., by committee, 363		—Notice to coroner when any person killed	339
Assistant commissioner of labor and industry <i>ex officio</i> superintendent of mine-rescue station	366	—Notice to mine inspector when loss of life or serious accident results ..	339
Assistant commissioner of labor and industry member of mine-rescue committee	362	Age certificate for child over sixteen years of age	68
Assistant superintendents to be appointed by commissioner of labor and industry	366	Child under sixteen not to be employed	68

INDEX.

MINES—continued:	<i>section</i>
Mine-rescue work.—See <i>Mine-rescue Work.</i>	
Workmen's compensation act, all mines within provisions	563
MINING-BOSS—	
Duty to call attention to provisions of health-and-safety act	357
Employment of inside overseer in coal mine, called mining-boss.....	335
Examination and certification.—See <i>Examining Board for Miners.</i>	
Measure air current and report to inspector	335
Penalty for failure to comply with provisions of act.....	340
MINORS—	
Apprentices.—See <i>Apprentices.</i>	
Period of minority in males and females	84
Wages, payment to minor.....	85
See, also, <i>Industrial Welfare Commission.</i>	
MISDEMEANORS—	
Concurrent jurisdiction of district court and justice of the peace....	400
Jurisdiction of justice of the peace....	400
Limit of fine and imprisonment in justice court	400
MOBS—	
See <i>Unlawful Assemblies.</i>	
MOTHER'S AID—	
Act not to repeal other acts relating to poor	402
Affidavits of disinterested householders	401
Amount of aid.....	401
Application of mother for aid.....	401
Attorney not to receive fee for proceedings	402
Board of county commissioners to have jurisdiction of all cases under act	403
Certified copy of findings and order filed with county clerk.....	402
County clerk to draw warrant each month	402
County treasurer to pay warrants out of general revenue fund.....	402
Duplicate receipts	402
Duty of county commissioners to pay allowance or pension.....	401
Investigation and report by three reputable women	401
Order determining facts and fixing amount	401
Payment to mother for child or children	401
Persons to whom county commissioners may pay allowance or pension..	401
Repeal of former act.....	404
Supplies may be given instead of money	401
Temporary increase or decrease of payments	401
Warrants delivered to persons designated	402
MOTORMAN—	
Inclosed vestibule required for motor-man, etc., during certain months...	504
Seat to be provided for use of motor-man	504
Toilet facilities to be provided for employees and passengers.....	505
Use of seat by motorman.....	504

MOTORMAN—continued:	<i>section</i>
Violation of act, penalty.....	506
See, also, <i>Street Railways and Interurban Lines.</i>	
NEGLIGENCE—	
See <i>Damages; Workmen's Compensation Act.</i>	
NIGHT SCHOOLS—	
Act not to affect law relating to day schools	406
Attendance not compulsory.....	406
Courses of study.....	408
Equipment same as used in day school to be furnished.....	408
Free public night school may be maintained by school board or board of education	405
Government of such schools.....	406
Payment of cost of establishing and maintaining	406
Persons eligible to attend.....	405
Petition by parents, etc., board to establish and maintain school....	405
Qualifications of teachers, teacher's certificate	409
Repeal of acts in conflict.....	410
Rules and regulations.....	408
Sessions of school, when and where held	407
Teachers, board to hire one or more..	409
Teacher's salary calculated on number of hours actually spent in teaching	409
Term of school, commencement and continuance	407
NONRESIDENTS—	
See <i>Officers.</i>	
NOXIOUS GASES—	
See <i>Ventilation of Coal Mines.</i>	
OFFICERS—	
Duty of state, county, township, and city officers to furnish information to commissioner of labor and industry	176
Importing or personating—	
—Governor may appoint nonresident to serve warrant issued on requisition.	414
—Nonresidents not to be appointed special deputies, marshals, or policemen	411
—Penalty for exercising functions of officer without authority	413
—Penalty for person holding himself out as deputy sheriff, etc., without authority	413
—Penalty for violation of provision concerning importation of private detectives	414
—Person, officer, etc., employing private detectives guilty of felony....	414
—Separate and distinct offense each day private armed detective forces employed	414
—Unlawful to import person, etc., for purpose of discharging duties devolving on sheriffs, etc.....	412
Unlawful assemblies, duties of officers.—See <i>Unlawful Assemblies.</i>	
Vagrancy, duties of officers.—See <i>Vagrancy.</i>	
See, also, <i>County Attorneys; Fire Protection; Prosecuting Attorneys; Public Work.</i>	
OIL AND GAS LEASEHOLD—	
See <i>Liens for Labor.</i>	

INDEX.

	section		section
OLD SOLDIERS' PREFERENCE LAW—		PLUMBERS, EXAMINATION AND CERTIFICATION—	
Age and qualifications of ex-soldiers and sailors	415	Applicants compelled to pass an examination as to qualifications.....	421
Civil-service act not to limit or repeal preference law	113	Application made to board where applicant resides or nearest board....	425
Employment of persons who served in army and navy	415	Application to board of examiners....	421
Officer or board failing to obey provisions of act, penalties.....	416	Appointment of plumber members of board	422
Penalty for violation of provisions of act	418	Board in every city of 7,000 or more, 422	
Preference to appointment or employment in public departments.....	415	Certificate required for master plumber, employing plumber, or journeyman plumber	420
Preference to employment on public works of state, county, city, or town	415	Certificate valid throughout the state, 423	
Soldiers and sailors to be retained in making reduction of force.....	417	Chairman of board of health <i>ex officio</i> chairman of board of examiners... 422	
Widows and orphans of deceased soldiers and sailors to be retained in making reduction of force.....	417	Cities to pass ordinances prescribing rules and regulations for plumbing work, etc.	424
OPENINGS IN COAL MINES—		Cities to which act shall apply.....	420
Construction of openings.....	332	Disposition of fees collected.....	423
Number of persons permitted to work until openings constructed.....	332	Examination, what it shall cover....	423
Penalty for failure to comply with provisions of act	340	Fees for issuance of certificates....	423
Regulations concerning openings.....	332	Issuance of certificate.....	423
See, also, <i>Escape-shafts in Coal Mines.</i>		Members of board, term of office, compensation	422
ORDERS FOR MERCHANDISE—		Nature of examination	421
See <i>Wages.</i>		Penalty for violation of provisions of act	426
OVERHEAD STRUCTURES—		Permit to be required before doing any plumbing work	424
Attorney-general to bring action to enjoin on complaint of any citizen, 434		Times and places for examination of applicants, board to designate....	423
Clearance required of structures over railroad tracks	433	PLUMBING WORK—	
Unlawful to erect over railroad tracks, without proper clearance.....	433	See <i>Plumbers, Examination and Certification.</i>	
See, also, <i>Railroads.</i>		POLICEMEN—	
PAINTING—		See <i>Officers.</i>	
See <i>Construction Work.</i>		POLITICAL CAMPAIGN—	
PAROLED AND DISCHARGED PRISONERS—		Unlawful for officer, employee, or appointee in classified civil service to participate	111
Exposing or threatening to expose, to prevent from obtaining employment, etc.	419	POLL TAX—	
Extorting money, etc., by exposing or threatening to expose, etc.....	419	Act not applicable to residents of certain cities	427
Penalty for violation of act.....	419	Amount of tax	427
Violation of act a misdemeanor....	419	Collection of delinquent taxes.....	427
PASSENGERS ON FREIGHT TRAINS—		Duty of officers to give notice.....	427
See <i>Railroads.</i>		Payment of tax in labor.....	427
PASSES—		Penalty for failure to pay tax.....	427
See <i>Free Passes, etc., on Railroads.</i>		Persons required to pay poll tax....	427
PEACE OFFICERS—		Tax warrants	427
See <i>Officers.</i>		Time for payment of tax.....	427
PENITENTIARY—		Use of money received.....	427
See <i>Convict Labor.</i>		Volunteer fire department, members may be exempted	427
PENSIONS—		POOR—	
See <i>Mother's Aid.</i>		See <i>Mother's Aid.</i>	
PERSONAL EARNINGS—		PRISONERS—	
See <i>Wages.</i>		See <i>Convict Labor; County Prisoners; Paroled and Discharged Prisoners.</i>	
PERSONAL INJURIES—		PRIVATE DETECTIVES—	
See <i>Accidents; Damages; Workmen's Compensation Act.</i>		Governor may appoint nonresident to serve warrant issued on requisition, 414	
PICTURE SHOWS—		Nonresidents not to be appointed special deputies, marshals or policemen	411
See <i>Fire Protection.</i>		Penalty for exercising functions of officer without authority.....	413
PILOT FOR DETOURED TRAINS—		Penalty for person holding himself out as deputy sheriff, etc., without authority	413
Penalty for violation of act.....	478		
Pilot to be furnished for trains detoured over other railroad.....	477		
Qualifications of pilot	477		

INDEX.

PRIVATE DETECTIVES—continued:	<i>section</i>
Penalty for violation of provision concerning importation of private detectives	414
Person, officer, etc., employing private detectives guilty of felony.....	414
Separate and distinct offense each day private armed detective forces employed	414
Unlawful to import person, etc., for discharging duties devolving on sheriffs, etc.	412
PROP TIMBER—	
Kept in easy access.....	335
Mine to be supplied.....	335
Penalty for failure to comply with provisions of act.....	340
PROSECUTING ATTORNEYS—	
Prosecution of persons failing to comply with act concerning scales at mines	399
See, also, <i>County Attorneys</i> .	
PUBLIC EXHIBITIONS—	
See <i>Child Labor</i> .	
PUBLIC HALLS, ETC.—	
See <i>Fire Protection</i> .	
PUBLIC OFFICERS—	
See <i>Officers</i> .	
PUBLIC WORK—	
Accidents—	
—Accidents to be reported.....	11
—Annual report of factory inspector, report of accidents.....	12
—Duty of factory inspector to make investigation and recommendations, —Failure to send notices and statements required, penalty.....	11
—Inquest, attendance by inspector or deputy	11
—Penalty for failure to report accidents	13
—Statement not competent evidence..	11
—Statement to be sent to state factory inspector	11
Bond to secure payment of claims—	
—Amount and conditions of bond taken by public officer.....	283
—Approval of bond taken by public officer	284
—Claimant for labor, etc., may sue on bond taken by public officer.....	284
—Contract relating to public improvements in sum exceeding \$100.....	283
—Filing of bond taken by public officer	284
—Liens discharged, others not to attach, when bond taken by public officer	284
—Limitation of actions on bond taken by public officer.....	284
—Public officer to take bond from contractor	282
Eight-hour day—	
—Contractor not to require or permit more than eight hours' work...	429
—Contracts deemed made on basis of eight hours constituting day's work,	429
—Eight hours constitute a day's work for laborers, workmen, etc.....	428
—Employees of contractors and subcontractors deemed employed on public work	428
—Exception in cases of extraordinary emergency	428, 429
—Light and water plants in cities of second and third classes exempted..	428

PUBLIC WORK—continued:	<i>section</i>
—Payment of wages on basis of eight-hour day	428
—Penalty for violation of act by public officer, contractor, etc.....	430
—Wages not less than current per diem wages in the locality.....	428
See, also, <i>Convict Labor; County Prisoners; Old Soldiers' Preference Law</i> .	
QUARRY—	
Child under sixteen not to be employed,	68
See, also, <i>Workmen's Compensation Act</i> .	
RAILROAD EMPLOYEES—	
See <i>Damages; Hours of Labor; Railroads; Workmen's Compensation Act</i> .	
RAILROADS—	
Accidents—	
—Accidents to be reported.....	11
—Annual report of factory inspector, report of accidents.....	12
—Duty of factory inspector to make investigation and recommendations, —Failure to send notices and statements required, penalty.....	11
—Inquest, attendance by inspector or deputy	11
—Investigation by public utilities commission in connection with labor department.—See note to ch. 36.	
—Notice to be sent to public utilities commission.—See note to ch. 36.	
—Penalty for failure to report accidents	13
—Public utilities commission, duty to report to.—See note to ch. 36.	
—Statement not competent evidence..	11
—Statement to be sent to state factory inspector	11
Bond from contractor—	
—Bond to be filed in each county....	431
—Bond to be taken for protection of laborers, etc.	431
—Railroad liable when bond not taken, 431	
—Suit on bond, by whom brought... 431	
Cabooses, size and construction.—See "Way Cars or Cabooses," under this heading.	
Clearance of overhead structures....	433
Crossings, signals—	
—Approval of signals.....	467
—Interlocking or automatic signals..	467
—Permission to install system of signals, etc.	467
—Trains pass over crossings without stopping	467
Damages caused from neglect, liability of company	438
Damages.—See <i>Damages</i> .	
Destroying railroad property—	
—Aiding or abetting in commission of offenses named, punishment.....	442
—Embankment of railroad, punishment for injuring, etc.....	440
—Liability of person committing acts, to railroad company or to persons injured	442
—Locomotive, car, etc., in use, punishment for injuring, etc.....	441
—Obstructions on track, punishment for placing	439
—Obstructions on track, punishment when death occasioned by act....	439
—Rails, sills, cross-ties, etc., punishment for injuring, etc.....	440

INDEX.

RAILROADS—continued: section

- Tracks, bridges, etc., punishment for destroying or injuring..... 439
- Water station, etc., punishment for injuring, etc. 441
- Detoured trains, pilot to be furnished for 477
- Employees, injury or death.—See *Damages*.

Flagman—

- Accident occurring by failure, refusal or neglect of flagman, etc., punishment 446
- Flagman to be stationed regardless of automatic signals, etc..... 444
- Penalty for failure of flagman, etc., to perform duty..... 446
- Penalty for violation of act..... 445
- Stationed to protect trains, etc., obstructing main tracks..... 443
- Street railway crossing railway tracks 482
- Visible and audible signals, flagman to have 444
- Free passes, etc.—See *Free Passes, etc., on Railroads*.

Frogs, switches and guard-rails—

- Accidental injury to be guarded against by filling, blocking and guarding 455
- Liability of company to person injured 456
- Penalty for violation of act..... 456
- Separate offense each thirty days act not complied with 456

Headlights on locomotives—

- Act not to apply to certain engines, 457
- Conditions under which visibility measured 457
- Locomotive engines to be equipped with headlights 457
- Operation of engines for part of day in violation of act, complete misdemeanor 458
- Penalty for violation of act..... 458
- Power of headlight required..... 457

Hours of labor—

- Act not applicable to employees of sleeping-car companies, etc. 459
- Actions brought against company violating act by attorney-general or prosecuting attorney of county... 460
- Baggagemen and express messengers not subject to act 459
- Cases in which act shall not apply, 459
- Complaint to commissioner of labor, 460
- Complaint to be filed by commissioner of labor 460
- Eight hours' rest required..... 459
- Federal act.—See note to ch. 36, art. 10.
- Investigation by commissioner of labor 460
- Penalty for violation of act..... 460
- Sixteen consecutive hours on duty by persons named 459
- Injury or death of employees.—See *Damages*.

Interurban lines.—See *Street Railways and Interurban Lines*.

Journal brass—

- Employees may remove journal brass in performance of duty.... 468
- Unlawful to remove from engine, car, motor, etc. 468
- Violation of act a felony, punishment 469

RAILROADS—continued: section

- Lights controlling trains.—See "Switch Lights, etc.," under this heading.
- Neglect, damages caused from..... 438
- Negligence.—See *Damages*.

Obstructing operation, etc.—

- Act not applicable to persons quitting employment except as specified, 473
- Combining or conspiring to impede operation and conduct of business.. 472
- Combining or conspiring to impede regular running of trains..... 472
- Engineer abandoning locomotive in furtherance of combination, etc., penalty 470
- Impeding or obstructing operation or conduct of business 471
- Impeding or obstructing regular running of trains 471
- Intimidation, etc., to obstruct operation, penalty 471
- Obstructions on track, punishment when death occasioned by acts... 439

Overhead structures—

- Attorney-general to bring action to enjoin, on complaint of any citizen, 434
- Clearance required of structures over tracks 433
- Unlawful to erect structures over tracks, without proper clearance... 433

Passengers on freight trains—

- Act not applicable to certain trains loaded with livestock 474
- Caboose need not be stopped at depot 474
- Company liable only for gross negligence 474
- Officer or employee of company violating act, guilty of misdemeanor.. 475
- Penalty for violation of act..... 475
- Repeal of Laws of 1907, ch. 274... 476
- Stopping to receive or discharge passengers 474
- Trains to which caboose attached obliged to transport passengers... 474
- Transportation of children 474
- Passes.—See *Free Passes, etc., on Railroads*.

Pilot for detoured trains—

- Penalty for violation of act..... 478
- Pilot to be furnished for trains detoured over other railroad 477
- Qualifications of pilot 477

Shelter for laborers—

- Division points where shops maintained, sheds required 479
- Penalty for failure to comply with requirements of act..... 480
- Temporary repairs at other points than division points 479
- Unlawful to build or repair equipment without sheds 479

Street railway across tracks—

- Crossing of tracks by cars operated by overhead wires 481
- Flagman at crossing, cars not required to stop 482
- Height of wires over top of railroad track 481
- Place of making stop by street cars, 482
- Street cars to be brought to full stop before crossing 482

Switch lights, etc.—

- Act not to apply in certain cases.. 483
- Automatic block signals answering purpose of switch lights..... 483

INDEX.

- RAILROADS—continued:** section
- Equipped and maintained on all main-line switch stands..... 483
 - Lights controlling movement of trains to be kept burning from sunset to sunrise 483
 - Manipulating or tampering with switch stand, target, lights, etc.... 485
 - Penalty for violation of act..... 484
 - Punishment for manipulating lights, etc., to mislead train crews..... 485
 - Unlawful act resulting in death, felony, punishment 485
- Way cars or cabooses—**
- Act not applicable to passenger or combination passenger and baggage cars 487
 - Corporations and persons to which act shall apply 486
 - Specifications for way cars or cabooses for use in Kansas..... 487
- Wires crossing tracks—**
- Complaint to public utilities commission 490
 - Duty of public utilities commission, 489
 - Interference with wires of other utility 489
 - Investigation by public utilities commission 490
 - Minimum height of wires from tops of rails 489
 - Order by public utilities commission for placing of wires, etc..... 490
 - Repeal of former act..... 491
 - Stringing of wires which cross over or under tracks 489
 - Telegraph and telephone wires, rules for stringing 489
 - Transmission of electricity, rules for stringing of wires for..... 489
 - Trolley wires, etc., height above track 481
- See, also, *Street Railways and Interurban Lines; Workmen's Compensation Act.*
- REFORMATORY—**
See *Convict Labor.*
- REPAIRING—**
See *Construction Work; Shelter for Laborers on Railroads.*
- RESCUE WORK—**
See *Mine-rescue Work.*
- RESIGNATION—**
See *Wages.*
- RISK OF EMPLOYMENT—**
See *Damages; Workmen's Compensation Act.*
- ROADS—**
See *Convict Labor; County Prisoners.*
- ROOM-AND-PILLAR PLAN OF OPERATING MINES—**
- Application of act to mines already in operation under single-entry plan.. 371
 - Cross-cuts, intervals at which made.. 371
 - Double entries to be driven parallel.. 371
 - Inspector to give notice to owner, etc., to comply with provisions of act... 372
 - Manner of prosecuting work in mine, 371
 - Owner, etc., given thirty days to comply with act 372
 - Penalty for failure of owner, etc., to comply with provisions of act..... 373
 - Requirements concerning cross-cuts.. 371
- ROOM-AND-PILLAR PLAN OF OPERATING MINES—continued:** section
- Separate offense, every day mine so operated after first conviction.... 373
 - See, also, *Break-throughs in Coal Mines; Openings in Coal Mines; Ventilation of Coal Mines.*
- SABBATH—**
See *Sunday Labor.*
- SAFEGUARDS—**
- Continuing dangerous method of operation when prohibited..... 174
 - Duty of owner to comply with notice of commissioner and notify commissioner 174
 - Employee, etc., operating machine without safeguard, penalty..... 174
 - Failure of owner, etc., to comply with notice, etc., penalty..... 174
 - Injurious operation of machine, etc., penalty 174
 - Notice to owner, etc., by commissioner of labor, to provide safeguards, etc. 174
 - Removal for repairs, replaced before operating machine 174
- See, also, *Department of Labor and Industry; Manufacturing Establishments; Workmen's Compensation Act.*
- SAFETY APPLIANCES—**
See *Safeguards.*
- SAFETY-LAMPS—**
- Furnished by owner of mine..... 335
 - Penalty for failure to comply with provisions of act..... 340
 - Property of owner of mine..... 335
- SAILORS—**
See *Old Soldiers' Preference Law.*
- SALARIES—**
See *Department of Labor and Industry.*
- SALT MINES—**
See *Accidents; Department of Labor and Industry; Mines; Workmen's Compensation Act.*
- SANITARY CONDITIONS—**
See *Industrial Welfare Commission.*
- SCAFFOLDING—**
See *Construction Work.*
- SCHOOLS—**
See *Child Labor; Night Schools.*
- SCRIP—**
See *Wages.*
- SEATS—**
- Employers of women or girls to furnish 65
 - Penalty for failure to comply with act, 66
 - Penalty for failure to comply with act concerning motorman 506
 - Seat to be provided for use of motorman on street railway or interurban line 504
 - Use of seat by motorman under reasonable restrictions 504
- SECRETARY OF MINE INDUSTRIES—**
See *Department of Labor and Industry.*
- SHELTER FOR LABORERS ON RAILROADS—**
- Division points where shops maintained, sheds required..... 479

INDEX.

SHELTER FOR LABORERS ON RAILROADS

—continued:

Penalty for failure to comply with requirements of act.....	480
Temporary repairs at other points than division points.....	479
Unlawful to build or repair equipment without sheds	479

SHERIFFS—

See *Officers*.

SHOT-FIRERS—

See *Shots, Shot-firers, etc.*

SHOTS, SHOT-FIRERS, ETC.—

Coal-drillings not to be used for tamping shots	384
Coal dust accumulated so as to make it dangerous, unlawful to permit shots to be fired.....	377
Conditions under which shots may be fired	374
Drillings to be removed by miner from mouth of drill-hole before shot fired.....	384
Employment of shot-firers to fire all shots	374
Examination and certification of shot-firers before being employed.....	320
Following or dependent shots.....	378
Hole penetrating solid face.....	378
Limit of amount of powder to be used	378
Long-wall system, certain provisions not applicable to mines so operated.....	379
Long-wall system, shots not to be fired until mine vacated.....	379
Mechanical shot-firing devices, persons to be out of mine.....	374
Mixed powder, unlawful to use.....	378
Penalty for failure to comply with or for violation of act.....	380
Penalty for failure to comply with provisions concerning drillings.....	385
Regulations concerning preparing and firing of shots.....	378
Sections of former act repealed by this act	381
Separate offense, each day's violation or failure to comply.....	380
Shot in body of coal, etc., already loosened	378
Shots in sinking and developing mine.....	374
Shots in strip mine.....	374
Strip mine, certain provisions not applicable to	378
Strip mine, unlawful to permit firing when person close enough to be injured	375
Tamping or stemming of shot-hole.....	378
Two shot-firers required except in strip mines	376
Unlawful to permit shots to be fired except as provided.....	374
Unlawful to permit shots to be fired unless two shot-firers in mine.....	376

SMALL DEBTORS' COURTS—

Act supplemental to existing legislation	503
Appeal by defendant, bond or deposit on appeal	499
Appeal tried in district court without pleadings	499
Appointment of judge of such court.....	492
Attorney at law, etc., not allowed to be concerned in litigation.....	501
Attorney's fee allowed when case decided against defendant on appeal.....	499
Bond or deposit on appeal.....	499
Case not to be entertained when plaintiff could resort to other courts.....	502

SMALL DEBTORS' COURTS—cont.: section

Commencement of suit.....	497
Costs not assessed or charged to either party	497
County or city to furnish stationery, postage, a docket and a telephone.....	493
Docket entry when suit commenced.....	497
Entry of judgment by clerk of district court	500
Establishment of court by county commissioners or city officers.....	492
Execution on judgment issued out of district court	500
Form of appeal.....	499
Form of certificate for certifying judgment to district court.....	500
Hearing before judge.....	497
Inability of plaintiff to employ a lawyer, etc.	496
Judge not to entertain case when plaintiff could resort to other courts.....	502
Judge of such court, selection, term of office	493
Judge to serve without pay.....	501
Judgment certified to district court if not paid	500
Judgment conclusive on plaintiff.....	499
Judgment rendered	497
Judgment to be paid by defendant forthwith or on terms decreed.....	498
Jurisdiction of court.....	495
Jurisdiction where court established in county and also in city.....	495
Need for establishment of court.....	492
Place where judge shall hold court.....	494
Plaintiff must appear in person and state cause orally.....	497
Plaintiff to make showing before judge shall entertain suit.....	496
Purpose of court.....	492
Resolution or ordinance for establishment of court.....	492
Summoning of defendant.....	497
Witnesses, etc., judge may consult informally, and give judgment.....	501

SOCIETY OF LABOR—

See *Department of Labor and Industry*.

SPECIAL DEPUTIES—

See *Officers*.

SPRINKLING AND REMOVAL OF DUST, ETC., FROM MINES—

Duty of mine boss, etc., in charge of mine where coal dust, etc., accumulate	382
Mine inspector and deputies to enforce preventive measures against accumulation of coal dust, etc.....	382
Mine to be sprinkled or saturated, etc.	352
Penalty for failure to sprinkle or remove coal dust, etc.....	383
Removal of coal dust where impracticable to overcome by sprinkling.....	382
Repeal of acts in conflict with this act	386
Shots not to be fired when dust accumulated so as to make it dangerous.....	377
Sprinkling of air-courses, entries, rooms, etc.	382

STAGING—

See *Construction Work*.

STAIRWAYS—

See *Coal Mines; Manufacturing Establishments*.

STAND-PIPE— See <i>Fire Protection</i> .		section	STREET RAILWAYS AND INTERURBAN	
STATE BARBER BOARD— See <i>Barber Board</i> .			LINES—continued:	section
STATE FACTORY INSPECTOR— See <i>Factory Inspector</i> .			Inclosed vestibule required for motor-	
STATE FAIR GROUNDS— Inmates of reformatory detailed to care for grounds	160		man, etc., during certain months... 504	
STATE MINE INSPECTOR— See <i>Mine Inspector</i> .			Penalty for failure to comply with pro-	
STATE SECRETARY OF MINE			visions of act	506
INDUSTRIES— See <i>Department of Labor and In-</i>			Public utilities commission to enforce	
STATE SOCIETY OF LABOR— See <i>Department of Labor and In-</i>			provisions concerning toilet facili-	
STATE SUPERINTENDENT OF			ties	505
INSPECTION— See <i>Fire Protection</i> .			Repeal of Laws of 1897, ch. 172....	507
STEAM BOILERS AT MINES— Inspection of steam boilers.....	333		Seat to be provided for use of motor-	
Penalty for failure to comply with pro-			man	504
visions of act	340		Toilet facilities to be provided for em-	
Report of inspection conveyed to			ployees and passengers	505
mine inspector	333		Use of seat by motorman under rea-	
Steam gauge, water gauge, and safety			sonable restrictions	504
valve to be provided on boiler....	333		Vestibule to be inclosed and heated..	504
STOOLS— Employers of women or girls to fur-			Violation of act, acts which shall con-	
nish	65		stitute	506
Failure of employer to comply with			STREETS— See <i>Convict Labor; County Pris-</i>	
act, penalty	66		<i>oners.</i>	
Penalty for failure to comply with act			STRIP MINES— See <i>Shots, Shot-firers, etc.</i>	
concerning motorman	506		SUNDAY LABOR— Ferryman may cross passengers on	
Seat to be provided for use of motor-			any day of week.....	509
man on street railway or interurban			Household offices of daily necessity,	
line	504		etc., excepted	508
Use of seat by motorman under rea-			Keeping open any grocery, etc.,	
sonable restrictions	504		penalty	510
STREET RAILWAYS AND INTERURBAN			Laboring or compelling other persons	
LINES— Accidents—			to labor, penalty	508
—Accidents to be reported.....	11		Necessity, works of, excepted.....	508
—Annual report of factory inspector,			Persons observing other day of week	
report of accidents	12		as Sabbath, exception	509
—Duty of factory inspector to make			Sale of drugs or medicines, excepted..	511
investigation and recommendations,	11		Sale of provisions or articles of im-	
—Failure to send notices and state-			mediate necessity, excepted.....	511
ments required, penalty	13		Selling goods, wares or merchandise,	
—Inquest, attendance by inspector or			penalty	510
deputy	11		SUPERINTENDENT OF INSURANCE— See "Scheme of compensation,	
—Investigation by public utilities com-			benefit or insurance," under	
mission in connection with labor de-			<i>Workmen's Compensation Act.</i>	
partment.—See note to ch. 36.			SWITCH LIGHTS, ETC.— Act not to apply in certain cases....	483
—Notice to be sent to public utilities			Automatic block signals answering	
commission.—See note to ch. 36.			purpose of switch lights.....	483
—Penalty for failure to report acci-			Equipped and maintained on all main-	
dents	13		line switch stands	483
—Public utilities commission, duty to			Lights controlling movement of trains	
report to.—See note to ch. 36.			to be kept burning from sunset to	
—Statement not competent evidence..	11		sunrise	483
—Statement to be sent to state factory			Manipulating or tampering with	
inspector	11		switch stand, target, lights, etc....	485
Crossing railroad tracks— —Crossing of railroad tracks by cars			Penalty for violation of act.....	484
operated by overhead wires.....	481		Punishment for manipulating lights,	
—Flagman at crossing, cars not re-			etc., to mislead train crews.....	485
quired to stop	482		Unlawful act resulting in death,	
—Height of wires over top of railroad			felony, punishment	485
track	481		SWITCHES— Frogs, switches and guard-rails—	
—Place of making stop by street cars,	482		—Accidental injury to be guarded	
—Street cars to be brought to full stop			against by filling, blocking, and	
before crossing	482		guarding	455
			—Liability of company to person in-	
			jured	456
			—Penalty for violation of act.....	456
			—Separate offense each thirty days	
			act not complied with.....	456
			Lights, etc.— —Act not to apply in certain cases... 483	
			—Automatic block signals answering	
			purpose of switch lights.....	483

INDEX.

252

INDEX.

VAGRANCY—continued: section
Threatening violence or personal injury to fellow workmen or to employers of labor 527
Working of vagrants by county..... 526

VAGRANTS—

See *Vagrancy*.

VENTILATION—

See *Fire Protection; Ventilation of Coal Mines*.

VENTILATION OF COAL MINES—

Air-gates not to be left open longer than while passing through..... 353
Air-ways to be examined twice each week 351
Air-ways to be provided..... 334
Air-ways to be provided and maintained 349
Amount of air to be supplied for each person 345
Brattice-cloth torn down, mine-boss to be notified and replace same..... 353
Break-throughs.—See *Break-throughs in Coal Mines*.
Fall of roof of air-ways, duty of mine-boss 350

Fire-damp—

—Examination of mines every morning 346
—Fire-damp to be diluted and rendered harmless 346
—Miners to be notified in case of danger 346
—Mines generating fire-damp to be kept free of standing gas..... 346
—Record of inspection to be made by examiner 346

Furnace not to be used where explosive gases germinated..... 345
Furnace ventilation 332
Inspection of mine every morning... 334
Inspector may increase amount of air when necessary 334
Inspector may increase volume of air to carry off noxious gases..... 346

Mining-boss to measure air current and report to inspector..... 335
Obstructions not to be placed in cross-cuts, rooms, etc., used as air-ways... 350

Openings to abandoned portions of mine to be securely gobbled or blocked off 345
Owner, agent, or operator to maintain ample means of ventilation... 334

Penalty for failure to comply with provisions of acts..... 340, 358
Report of inspection of air-ways to be forwarded to inspector once each month 351

Requirements concerning ventilation, 334
Room-and-pillar plan—

—Air to be split in four currents.... 345
—Amount of air to be supplied for each person 345
—Ample means of ventilation to be provided 345
—Area of air-course required..... 349
—Furnace not to be used where explosive gases germinated..... 345
—Openings to abandoned portions of mine to be securely gobbled and blocked off 345
Sides of air-ways caved in, duty of mine-boss 350

VENTILATION OF COAL MINES—cont.: sec.

Sprinkling of mines where coal-dust, etc., may accumulate..... 352, 382
Stagnant water not to be permitted to remain in air-courses, etc..... 350
Trap-doors not to be left open longer than while passing through..... 353

WAGES—

Attachment for wages earned in another state, when dismissed..... 536
Attachment, personal property not exempt from, in claims for wages.... 529

Check or draft—

—Act not construed as repealing other acts specified 535
—Act not to apply where check or draft actually honored by bank.... 534
—Application for abatement of action under act 532
—“Credits,” as used in act, defined.. 533
—Discharge of defendant upon payment of amount of check, etc., and costs 532
—Punishment for violating act when check, etc., for less than twenty dollars 531
—Punishment for violating act when check, etc., for more than twenty dollars 531
—Unlawful to draw, make, etc., knowing there are no funds or credits to pay same 530

Claims for wages, personal property not exempt from..... 529

Collection in small debtors' courts.—

See *Small Debtors' Courts*.

Convicts, payment of wages to.—See *Convict Labor*.

Execution, personal property not exempt from, in claims for wages.... 529

Exemption not applicable to personal property in claims for wages..... 529

Exemption of wages earned in another state 536

Garnishment—

—Accounts sold, assigned, delivered to collector, etc., act not to be invoked 538

—Act not to exempt earnings of debtor not head of family..... 538

—Act not to hold more than ten per cent and court costs, before judgment 538

—Affidavit for exemption..... 538

—Balance remaining, paid to debtor, 538

—Counter affidavit, when to be filed.. 538

—Earnings of debtor for personal services, when exempt..... 537

—Hearing on affidavits..... 538

—Notice of filing affidavit..... 538

—One deduction in any one calendar month 538

—Order for payment of funds toward satisfaction of judgment..... 537

—Property of judgment debtor applied to satisfaction of judgment..... 537

—Service on defendant when wages earned in another state..... 536

—Sickness of debtor or member of family 538

—Taking of earnings after judgment, 538

—Ten per cent and court costs, etc., may be taken and applied to debts, 538

Insolvency of corporation, etc., wages of employees preferred..... 539

INDEX.

WAGES—continued:	<i>section</i>	WASHINGTON'S BIRTHDAY—	<i>section</i>
Minor, payment to, full satisfaction..	85	Legal holiday	230
Orders for merchandise, etc.—See "Time checks, due bills, script, etc.," under this heading.		WATER—	
Public work.—See <i>Public Work</i> .		Stagnant water not to be permitted to remain in air-courses, etc.....	350
Resignation or discharge of employee—		Standing water not to be allowed to accumulate in mine	347
—Discharge of employee, wages be- come due as provided in act.....	552	WAY CARS OR CABOOSES—	
—Notice in writing to foreman, etc....	540	Act not applicable to passenger or combination passenger and baggage cars	487
—Penalty for failure to pay wages as provided in act.....	541	Corporations and persons to which act shall apply	486
—Place of payment of wages.....	540	Specifications for way cars or cabooses or use in Kansas	487
—Unlawful to refuse or neglect to pay wages within ten days.....	540	WEIGHING OF COAL AT MINES—	
—Wages continue as though party still in service.....	541	Check-weighman may be employed by miners	395
—Wages not to continue more than 60 days unless action brought....	541	Check-weighman subject to same oath and penalties as regular weighman,	395
Semi-monthly payment by corporations—		Coal accepted to be weighed, etc.....	397
—Act not to apply to state, or to municipal corporation	542	Coal sent to surface to be accepted or rejected	397
—Penalty for violation of act.....	543	Coal to be accounted for at legal rate of weights before being screened, etc.	393
—Repeal of acts in conflict with this act	544	Contracts, agreements, etc., waiving, modifying or annulling act, void and of no effect	397
—Wages of mechanics, laborers, etc., to be paid as often as twice each month	542	Defects, etc., in scales called to at- tention of mine owner, etc.....	399
Small debtors' courts.—See <i>Small Debtors' Courts</i>.		Failure to put scales in proper ad- justment, penalty	399
Time checks, due bills, script, etc.—		Incorrect weighing of coal, resorting to any means for, penalty.....	396
—Act not to repeal other acts.....	545	Inspector of weights, measures, and scales	399
—Dated when issued and payable in money after fifteen days	545	Loaders in mines included in pro- visions of act	398
—Due date stamped for payment within fifteen days.....	547	Loading by ton or bushel, output to be weighed, etc.	398
—Failure to redeem in money, liable for double the amount and attorney fee	546	Oath of weighman, posted in weigh- office	394
—Issued in exchange for time check, due bill, etc., shall be payable in money	547	Penalty for violation of provisions of act	394
—Penalty for violation of act.....	548	Prosecutions for failure to comply with act concerning scales, etc....	399
Time for bringing actions for wages, etc.—		Refusal to allow inspector or deputy to test scales, penalty.....	399
—Action on agreement, etc., in writ- ing must be brought within five years	549	Right of action not invalidated by contract, etc.	397
—Action on contract, etc., not in writ- ing must be brought within three years	549	Rights and privileges of check-weigh- man	395
Weekly payment by corporations—		Scale or scales for fraudulent weigh- ing, penalty	396
—Attorney fee taxed and collected as part of judgment, when necessary to bring suit	556	Testing of scales	399
—Certain corporations excepted	550	Unlawful to pass coal over screen be- fore weighing	393
—Contract or agreement violating or evading act unlawful and void....	554	Weighman to subscribe oath.....	394
—Discharge of employee, wages be- come due as provided.....	552	WEIGHMAN—	
—Liability of corporation to employees of contractor	555	See <i>Weighing of Coal at Mines</i> .	
—Payment in lawful money not later than Friday of following week....	550	WELFARE COMMISSION—	
—Penalty due to employees.....	551	See <i>Industrial Welfare Commis- sion</i> .	
—Penalty for failure to pay wages as provided	551	WIRES ACROSS RAILROAD TRACKS—	
—Time within which employee may re- cover penalties	553	Complaint to public utilities commis- sion	490
—Wages of employees of contractor doing work for corporation payable as provided in act	555	Duty of public utilities commission... 489	
See, also, <i>Industrial Welfare Commission; Public Work</i> .		Interference with wires of other utility, 489	
WAGONMAKER—		Investigation by public utilities com- mission	490
Lien for labor	264-266	Minimum height of wires from tops of rails	489
See, also, <i>Liens for Labor</i> .		Order by public utilities commission for placing of wires, etc.....	490
		Repeal of former act.....	491

INDEX.

WIRES ACROSS RAILROAD TRACKS—cont.: sec.	
Stringing of wires which cross over or under tracks	489
Telegraph and telephone wires, rules for stringing	489
Transmission of electricity, rules for stringing of wires for	489
Trolley wires, etc., height above track	481

WOMEN AND GIRLS—

Employers to furnish chairs, stools, etc.	65
Failure of employer to furnish chairs, stools, etc., penalty	65
See, also, <i>Industrial Welfare Commission</i> .	

WORDS AND PHRASES DEFINED—

"Agent" (health-and-safety act relating to coal mines)	341
"Apprentice" (act creating industrial welfare commission)	245
"Arising out of and in the course of employment" (workmen's compensation act)	564
"Building work" (workmen's compensation act)	564
"Children" (act relating to department of labor and industry)	175
"Credits" (act concerning drawing of checks or drafts)	533
"Dependents" (workmen's compensation act)	564
"Electrical work" (workmen's compensation act)	564
"Employee" (act concerning free passes, etc., on railroads)	449
"Employer" (workmen's compensation act)	564
"Engineering work" (workmen's compensation act)	564
"Factory" (act relating to department of labor and industry)	175
"Factory" (workmen's compensation act)	564
"Family" (act concerning free passes, etc., on railroads)	450
"Learner" (act creating industrial welfare commission)	245
"Lessee" (health and safety act relating to coal mines)	341
"Manual labor in private house," etc. (act relating to department of labor and industry)	175
"Manufacturing establishments" (factory act)	291
"Members of a family" (workmen's compensation act)	564
"Mine" (workmen's compensation act)	564
"Minor" (act relating to department of labor and industry)	175
"Minor" (act creating industrial welfare commission)	245
"Occupation" (act creating industrial welfare commission)	245
"Operator" (health-and-safety act relating to coal mines)	341
"Owner" (health-and-safety act relating to coal mines)	341
"Person" (act relating to department of labor and industry)	175
"Person" (factory act)	292
"Quarry" (workmen's compensation act)	564
"Railway" (workmen's compensation act)	564
"Women" (act relating to department of labor and industry)	175
"Women" (act creating industrial welfare commission)	245

WORDS AND PHRASES DEFINED—cont.: sec.	
"Workman" (workmen's compensation act)	564
"Workshop" (act relating to department of labor and industry)	175

WORK PERMITS—

See *Child Labor*.

WORKMEN'S COMPENSATION ACT—

Accidents for which principal liable to employees of contractor	559
Act not to affect liability to fine or penalty	558

Actions for compensation—

—Action not to be brought outside the state	590
—Action to set aside release joined with action for compensation	590
—Action where death results from injury	590
—Cause of action deemed accrued at time of accident	591
—Consent to arbitration by workman, provisions concerning	590
—Distribution of compensation	590
—Employee not within act, defenses available to employer	601
—Employer not within act, defenses abrogated	600
—Judgment for lump sum or periodical payments	590
—Jury, right to, deemed waived unless demanded	590
—Notice by publication in such action	590
—Review of judgment after six months	590
—Time for bringing action, when to begin to run	591
—Workmen's right determined and enforced by action	590

Acts not amended or repealed by this act	602
Agreement, compensation may be settled by	577
Agreements for modification of award not valid unless filed, etc.	582
Agricultural pursuits exempted	561
Amount of compensation to which workman shall be entitled	566
Annual earnings, rules for computing	567

Arbitration—

—Amount of fees of arbitrator when not fixed by agreement	580
—Appointment of arbitrator	578
—Award, making and filing	579
—Consent to arbitration to be in writing	578
—Extension of time for filing award	579
—Fees of arbitrator	580
—Findings that may be required by either party	578
—Lien of arbitrator on first payments due under award	580
—Notice of filing award	579
—Order of court to compel committee or arbitrator to file award	579
—Power of committee to adopt rules	578
—Procedure before committee or arbitrator	579
—Questions referred	578
—Settlement by committee representative of employer and workman, if no objection made	578
—Settlement by single arbitrator	578
—Taxing of fees and costs by arbitrator	580

INDEX.

WORKMEN'S COMPENSATION ACT—cont.: sec.

See, also, "Awards," under this heading.

"Arising out of and in the course of employment," as used in act, defined 564

Assumption of risk or hazard, when not a defense 600

Assumption of risk, when a defense... 601

Attorney's fees—

—Approval of contract by judge of district court 592

—Claim of attorney not enforceable lien unless contract in writing... 592

—Notice on submission of matter to judge of district court..... 592

—Submission of matter to judge of district court 592

Average annual earnings, rules for computing 567

Average earnings as basis for compensation for later injury, after previous disability 567

Awards—

—Agreement for modification not valid unless filed, etc..... 582

—Application for review of award, etc. 584

—Appointment of physicians and surgeons to make examination on review of award, etc..... 584

—Award to be in writing, signed, and acknowledged 581

—Award to specify amount due and unpaid by employer to workman... 581

—Awards which may not be reviewed, 584

—Credit for previous payments..... 581

—Evidence on review of award, etc., 584

—Grounds for cancellation of award, 584

—Grounds for modification of award, 584

—Lump sum, amount which may be provided for payment in award... 581

—Modification by subsequent written agreement 582

—Payments to be provided for..... 581

—Redemption of award by payment of lump sum..... 587

—Review of award, etc., by judge of district court 584

See, also, "Arbitration," under this heading.

Benefit, substitution of scheme of, etc., 593

Bond to secure payment of compensation 586

"Building work," as used in act, defined 564

Cases in which employer not liable under act 557

Certificate for scheme of compensation, benefit or insurance..... 593

Certificate of physician or surgeon, when competent evidence..... 575

Change of election by employee..... 599

Change of election by employer..... 598

Claim for compensation not assignable or subject to levy, etc..... 570

Claim for compensation required... 576

Clerk of district court to file awards, agreements, etc. 583

Compensation, case in which employer not liable 557

Compensation exclusive of other remedies or causes of action..... 566

Compensation, person paying entitled to damages against person liable for injury 560

WORKMEN'S COMPENSATION ACT—cont.: sec.

Compensation, substitution of scheme of, etc. 593

Compensation, workman not entitled to both damages and..... 560

Contract for substitution of compensation, benefit or insurance..... 593

Contract requiring employee to make election not to come within provisions of act, void..... 599

Contractor, principal liable to employee of 559

Contractor, workman may recover from, instead of principal..... 559

Contributory negligence, when a defense 601

Contributory negligence, when not a defense 600

Costs and fees—

—Amount of fees of arbitrator when not fixed by agreement..... 580

—Amount taxed to employer added to first payment..... 580

—Fees of arbitrator..... 580

—Lien of arbitrator on first payments due under award..... 580

—Taxing of costs and fees by arbitrator 580

Credit to employer for amounts paid before award or judgment..... 567

Damages, workman not entitled to recover both compensation and... 560

Death not resulting from injury, compensation 566

Death resulting from injury, compensation 566

Declaration of employee not to come within act, where filed; duplicate, where filed 599

Definition of words and phrases used in act 564

Deliberate intention of workman to cause injury, employer not liable.. 557

"Dependents," as used in act, defined, 564

Dependents, payment of compensation to 569

Discharge of employer on payment of compensation to dependents or administrator 569

Distribution of compensation among dependents 569

District court having jurisdiction, etc., construction of references to..... 589

District court to make necessary rules, 589

Effect of want of or defect in notice or service 576

Election by employers having less than five workmen 563

Election of employee, contract requiring, void 599

Election of employer changed by filing written statement 598

Election of employer, notice to be posted 598

Election of employers to come within provisions of act..... 561

"Electrical work," as used in act, defined 564

Employee entitled to come within act deemed within act unless declaration filed, etc..... 599

Employee not within act, defenses to action continued 601

"Employer," as used in act, defined.. 564

Employer liable to pay compensation to injured employee in accordance with act 557

INDEX.

WORKMEN'S COMPENSATION ACT—cont.: sec.

Employer not within act, defenses abrogated	600
Employers entitled to come within act deemed within act unless statement filed, exception	598
Employers to whom act shall apply	563
Employers within act, employees within act unless election filed	561
Employment to which act shall apply	561
Employments determined to be especially dangerous	561
"Engineering work," as used in act, defined	564
Execution on judgment on award, etc., when not to issue	585
Exemption of claim for compensation from levy, etc., cannot be waived	570
"Factory," as used in act, defined	564
Fellow servant, want of due care of, when a defense	601
Fellow servant, want of due care of, when not a defense	600
Filing of awards, agreements, final receipts, etc., by clerk of district court without fee	583
Final receipt or release to be filed, etc.,	583
Final receipt or release void unless filed, etc.	583
Final receipt upon final payment by employer	583
Funeral expenses, distribution when there are no dependents	569
Guardian or workmen mentally incompetent, minor, etc., may exercise right, privilege or election under act	565
Incapacity of employee, limitation not to run as to service of notice	576
Insurance at expense of employer, rights and duties of insurer	588
Insurance, substitution of scheme of compensation, benefit or	593
Insurer subrogated to rights and duties of employer, etc.	588
Interstate commerce, act not to apply to business or employments engaged in	562
Interstate commerce, act not to apply to persons injured while engaged in	562
Judgments on agreements or awards—	
—Application for judgment	585
—Approval of certificate or bond by district judge	586
—Bond to secure payment of compensation	586
—Employer may file certificate of insurance company that amount is insured, etc.	586
—Execution not to issue if bond given and payments continued	585
—Ground for making application	585
—Hearing by court	585
—Judgment, when rendered	585
—Lump sum judgment that may be awarded	585
—Notice to employer	585
—Stay of proceedings by employer	586
Limitation not to run if minor, etc., has no guardian	565
Loss of hand, arm, etc., amount of compensation	566
Loss of use of hand, arm, etc., how considered	566
Lump sum judgment on agreement or award	585

WORKMEN'S COMPENSATION ACT—cont.: sec.

Medical and funeral expenses, distribution when there are no dependents	569
Medical examination of employee—	
—Appointment of physicians and surgeons to make examination on review of award, etc.	584
—Employee entitled to have physician or surgeon present	571
—Employee or physician or surgeon obstructing examination	574
—Employment of neutral physician to make examination	572
—Examination by physician or surgeon selected by employer	571
—Fee for report of physician or surgeon	571
—Petition for examination by neutral physician, expenses, etc.	572
—Physician of employer not to give evidence unless physician of employee permitted to participate in examination	571
—Physician or surgeon not to give evidence unless opportunity given for examination by other physician, etc.	573
—Refusal of employee to submit to examination	574
—Report of examination, etc., not competent evidence unless supported by testimony of physician	575
—Report of physician or surgeon may be required by other party	571
—Report or certificate inadmissible when testimony inadmissible	575
—Right to compensation suspended during time examination obstructed or prevented by employee, etc.	574
—Testimony of physician	571
"Members of a family," as used in act, defined	564
"Mine," as used in act, defined	564
Mines within provisions of act	563
Modification of regulation concerning payments	568
Notice, effect of want of or defect in service of	576
Notice, matters to be stated	576
Notice to be posted of election of employer	598
Notice to be served on employer before proceedings for recovery of compensation maintainable	576
Number of persons employed, employers within act	563
Payments made in same manner as wages were payable	568
Permanent loss of use of hand, arm, etc., how considered	564
Principal contractor paying compensation may recover from subcontractor	559
Principal entitled to indemnity from contractor	559
Principal liable to workman of contractor	559
"Quarry," as used in act, defined	564
"Railway," as used in act, defined	564
Recording and indexing of papers filed with clerk of district court	583
Records and books for filing, etc., to be furnished by county commissioners	583

INDEX.

WORKMEN'S COMPENSATION ACT—cont.: sec.

Redemption of liability under awards—

—Amount of lump sum to be paid... 587

—Application for determination of amount to be paid..... 587

—Determination of amount by agreement 587

—Employer discharged from further liability 587

—Notice of application for determination of amount..... 587

—Redemption after payments made for six months..... 587

Remedies of workman against employer and others..... 560

Report of physician or surgeon, when competent evidence 575

Review of awards, etc., by judge of district court 584

Rights saved which accrued before publication of act..... 561

Rules to be made by district court... 589

Rules to be observed in computing average annual earnings..... 567

Scheme of compensation, benefit or insurance—

—Causes for revocation of certificate, 595

—Certificate of superintendent of insurance with approval of attorney-general 593

—Contract with workmen for substitution of scheme for provisions of act 593

—Employer liable only in accordance with scheme 593

—Employer to answer inquiries and furnish accounts to superintendent of insurance 596

—Information to be furnished by employer to superintendent of insurance 596

—Provisions for distribution of moneys, etc., when scheme terminated 594

—Revocation of certificate and termination of scheme..... 595

—Rules and regulations to be made by superintendent of insurance.... 597

—Scheme not certified unless provisions for distribution of moneys, etc., made 594

WORKMEN'S COMPENSATION ACT—cont.: sec.

Sections of former act repealed by Laws of 1917, ch. 226..... 603

Service of notice..... 576

Settlement of compensation by agreement 577

Stay of proceedings on application for judgment on agreement or award.. 586

Subcontractor, principal contractor may implead 559

Substitution of scheme of compensation, benefit or insurance..... 593

Testimony of physician or surgeon—

—Physician of either party not permitted to testify unless opportunity given for examination by other physician 573

—Physician of employer, when permitted to testify..... 571

—Report or certificate inadmissible when testimony inadmissible..... 575

—Report or certificate not competent evidence unless supported by evidence of physician..... 575

—Testimony of physician who actually makes examination..... 571

Treatment and care of injured employees 566

Willful failure of employee to use guard, etc., employer not liable... 557

Willful negligence of employer, etc., defenses not available..... 601

"Workman," as used in act, defined.. 564

Written notice required..... 576

Written statement on election of employer to come within act..... 561

WRONGFUL DEATH—

Action brought by personal representatives of deceased..... 604

Distribution of amount obtained.... 604

Limit of amount of damages..... 604

Next of kin may bring action in certain cases 605

Time for bringing action..... 604

Widow may bring action in certain cases 605

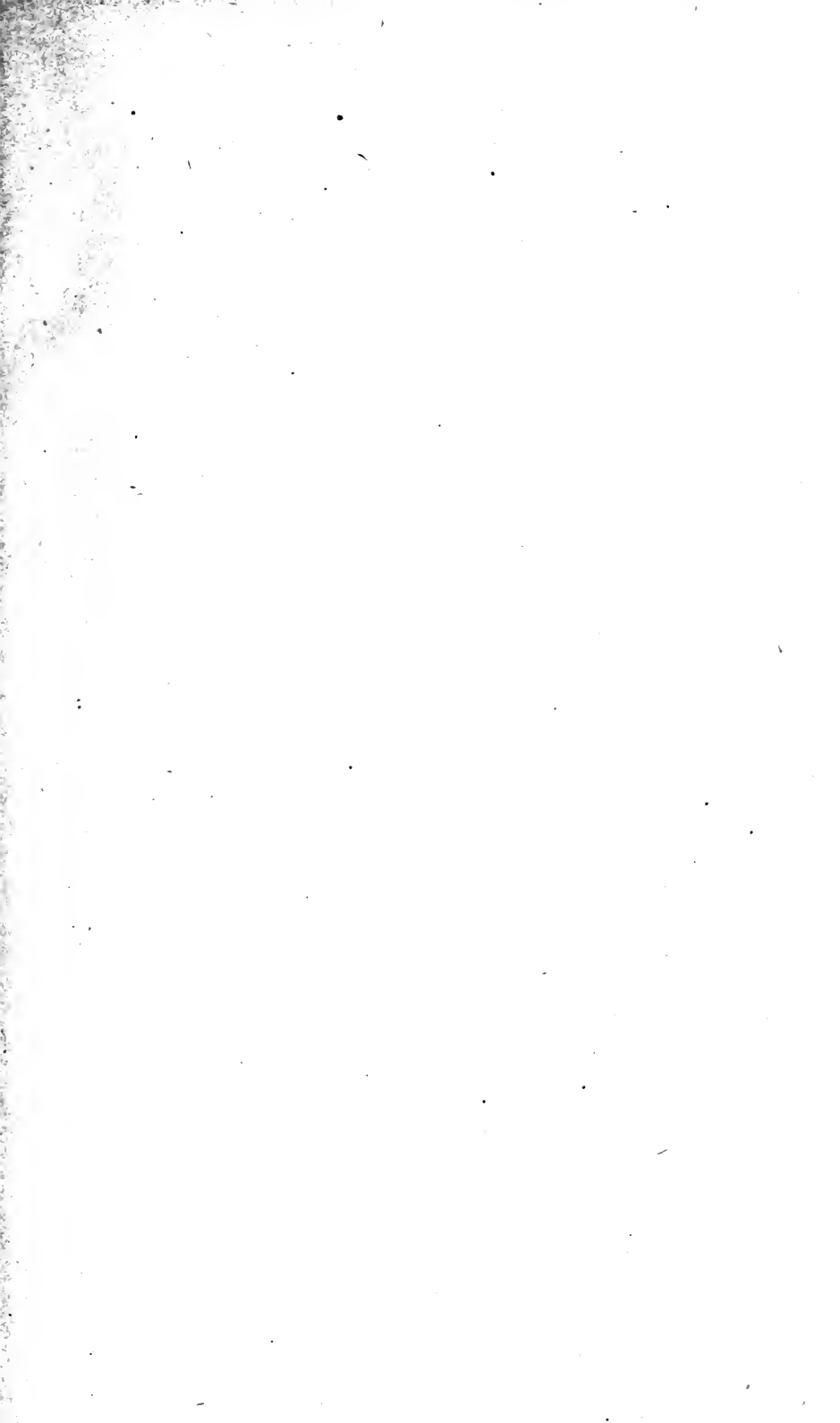
ZINC MINES—

See *Lead and Zinc Mines; Mines.*

ERRATUM.

Lines 3 and 4—commencing with "(b)"—of the footnote on page 70 were transposed from page 71 and should appear immediately preceding "(c)" and "(d)" on page 71.





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